

DEPARTMENT OF NATURAL RESOURCES

DIRECTOR'S ANNUAL REPORT: 2010

IC 4-22-2-28.1(k)

Robert E. Carter, Jr.
Director, Department of Natural Resources
Secretary, Natural Resources Commission
October 1, 2010

Forwarded to:
Legislative Council
Indiana Economic Development Corporation

ANNUAL REPORT

IC 4-22-2-28.1(k)

TITLE 312 NATURAL RESOURCES COMMISSION

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(Final rules filed during 2009 – 2010 Fiscal Year)

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(Final rules reported, and filed during 2008 – 2009 Fiscal Year)

- LSA Document #09-156(F)
- LSA Document #09-155(F)
- LSA Document #09-154(F)
- LSA Document #09-153(F)
- LSA Document #08-775(F)
- LSA Document #08-756(F)
- LSA Document #08-740(F)
- LSA Document #08-688(F)
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- LSA Document #08-413(F)
- LSA Document #08-295(F)
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- LSA Document #08-131(F)
- LSA Document #08-76(F)
- LSA Document #08-72(F)
- LSA Document #08-52(F)

(Final Rules reported, filed during 2007 – 2008 Fiscal Year)

- LSA Document #08-57(F)
- LSA Document #07-646(F)
- LSA Document #07-542(F)
- LSA Document #07-486(F)
- LSA Document #07-467(F)
- LSA Document #07-449(F)

- LSA Document #07-192(F)
- LSA Document #07-184(F)
- LSA Document #06-605(F)

(Final Rules reported, filed during 2006 – 2007 Fiscal Year)

- LSA Document #07-146(F)
- LSA Document #07-145(F)
- LSA Document #07-140(F)
- LSA Document #07-111(F)
- LSA Document #06-333(F)
- LSA Document #06-92(F)
- LSA Document #06-9(F)
- LSA Document #05-344(F)
- LSA Document #05-341(F)

(Final Rules reported, filed during 2005 – 2006 Fiscal Year)

- LSA Document #05-288(F)
- LSA Document #05-248(F)

IC 4-22-2-28.1(k) Responses

IC 4-22-2-28.1(k) Responses

The number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved

ARTICLE 1. DEFINITIONS

LSA Document #08-286(F)

Eight to ten questions were received concerning the applicability of the definition of "lake". Two of the questions may have been made on behalf of a small business.

LSA Document #07-111(F)

Questions were received regarding definitions associated with riparian rights, public freshwater lakes, and navigable waters. It is unknown whether the inquiries were made by small businesses.

ARTICLE 2. PROCEDURES AND DELEGATIONS

LSA Document #08-52(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 3. ADJUDICATORY PROCEEDINGS

LSA Document #08-52(F)

The Natural Resources Commission, Division of Hearings receives calls during the fiscal year from persons asking for information regarding administrative procedures in adjudicatory proceedings.

- Questions regarding filing and service procedures: 103
- Questions regarding application of the "Trial Rules" (not typically using that term, but that's what questions amount to): 10
- Questions regarding responsibility for identifying affirmative defenses (most often "adverse possession" or "prescriptive easement"): 23
- Other questions regarding 312 IAC 3-1: 51.

LSA Document #08-688(F)

One question was received and was probably on behalf of a small business.

ARTICLE 4. LAW ENFORCEMENT

LSA Document #07-145(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 5. BOATING ON PUBLIC WATERS OF INDIANA

LSA Document #09-210(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-775(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-295(F) and LSA Document #08-756(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-057(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 6. NAVIGABLE WATERS

LSA Document #07-646(F); LSA Document #09-137(F); LSA Document #09-152(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 6.2. GREAT LAKES BASIN WATER MANAGEMENT

LSA Document #08-531(F)

Roughly six questions and one complaint were received concerning an aspect of applicability of this rule or the underlying statute. Those asking questions were engaged in business, although whether they met the definition of a "small business" is unknown.

ARTICLE 6.3. WATER WITHDRAWAL CONTRACTS FROM STATE RESERVOIRS

LSA Document #08-614(F)

The small business regulatory coordinator did not receive any comments, questions or complaints. However, a Deputy Director the DNR has received comments.

LSA Document #08-131(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 6.5. OFF-ROAD VEHICLES AND SNOWMOBILES

LSA Document #10-51(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 7. TRAILS AND SCENIC RIVERS

LSA Document #07-542(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-153(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 8. PUBLIC USE OF NATURAL AND RECREATIONAL AREAS

LSA Document 09-470(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-344(F)

There have been public inquiries; however, no comments or complaints by small business have been received by this office DNR, Division of State Parks and Reservoirs on any of the related rule changes above to my knowledge. No records exist as no small businesses have commented on the above rules to this office in the last year to my knowledge.

LSA Document #07-646(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #07-449(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #06-9(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 9. FISH AND WILDLIFE

LSA Document #09-486(F)

Comments were received from 46 individuals through the public comment phase of this rule promulgation. 43 comments could be from individuals who own or operate a small business, such as a deer farming operation. All of these 43 comments were in support of the rule changes.

LSA Document #09-479(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-80(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-60(F)

None are known to be from small businesses. However, five comments could be from individuals who own or are president of a small business. These comments related to the rule change to allow youth hunters to take an antlered deer during the special youth deer season.

LSA Document #09-44(F)

None are known to be from small businesses. However, three (3) comments and one (1) question could be from individuals who own small businesses. These comments related to the use of short-barreled rifles and crossbows for deer hunting, as well as allowing archery equipment and firearms to be loaded, or capable of being loaded, before and after lawful shooting hours.

LSA Document #08-886(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-740(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-672(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 10. FLOOD PLAIN MANAGEMENT

LSA Document #08-614(F)

The small business regulatory coordinator did not receive any comments, questions or complaints. However, a Deputy Director the DNR has received comments.

LSA Document #08-72(F)

I have received no comments, complaints, or questions from small businesses regarding this rule.

ARTICLE 10.5. REGULATION OF DAMS

LSA Document #06-92(F)

No comments, complaints, and questions were received regarding the rule from small businesses, by the Small Business Regulatory Coordinator (SBRC) for LSA Document #06-92(F) in the most recent State fiscal year ending in June of 2010.

The comments, complaints, and questions routinely received are regarding the larger subject matter of dam safety, owner financial assistance, and the State's dam safety statute IC 14-27-7.5. They can be categorized into ten groups.

- Individuals living in the potential failure flood inundation areas below dams, seeking answers about the safety of the dams that put them at risk and the actions of the dam owners (or lack thereof) to correct deficiencies.
- Questions from reporters seeking to follow up on State efforts to require dam owners to repair or rehabilitate dams damaged during the major June 2008 flood event in southern Indiana.
- Engineering firms asking technical questions in either an attempt to learn how to design safe dams, or to understand the concepts of inspecting dams.
- Engineering firms with experience in dam safety engineering seeking to coordinate technical issue review prior to finalizing new dam, or existing dam rehabilitation designs.
- Owners of dams who do not understand why the statute holds them responsible for the safety, high hazard dam inspection, maintenance, operation, and repair of their structures.
- Owners of dams seeking State or Federal financial assistance for the performance of high hazard dam inspections, maintenance, operation, and this year particularly because of the extensive damage to privately owned dams caused by the June 2008 floods in the southern part of the State, questions from owners seeking financial assistance for the repair / rehabilitation of their structures.
- Owners of dams seeking free technical guidance on creating or modifying their dam so as to avoid State jurisdiction.
- Owners of dams seeking free technical / engineering analysis and guidance during either times of emergency conditions at their dams, or when deficiencies have grown to the point that structural rehabilitation is required.
- Questions from owners seeking to give their damaged or failed dams to the State.

- Emergency response agencies seeking on site assessments, technical analysis, and guidance during times of emergency conditions at dams.

ARTICLE 11. LAKE CONSTRUCTION ACTIVITIES

LSA Document #07-646(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #07-467(F)

Two questions were received concerning the applicability of these amendments. Whether the questions were made on behalf of a small business is unknown.

LSA Document #06-606(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #06-9(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 12. WATER WELL DRILLING AND GROUND WATER

LSA Document #05-341(F)

During the most recent fiscal year the Division of Water received approximately one inquiry per month regarding the construction standards for direct push wells under the provisions of Rule 312 IAC 13. No complaints were received regarding the minimum standards during this time period.

ARTICLE 14. TIMBER BUYERS, THEIR AGENTS, AND TIMBER GROWERS

LSA Document #09-154(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 15. TIMBER MANAGEMENT

LSA Document #09-155(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 18. ENTOMOLOGY AND PLANT PATHOLOGY

LSA Document #08-413(F)

Small businesses contact the division on a regular basis to set up compliance agreements to ensure compliance with the current rule. Members of the public contact the division on a regular basis with questions about the current quarantine and their ability to move regulated materials throughout the state of Indiana.

LSA Document #09-85(F)

Small businesses contact the division on a regular basis to set up compliance agreements to ensure compliance with the current rule. Members of the public contact the division on a regular basis with questions about the current quarantine and their ability to move regulated materials throughout the state of Indiana.

ARTICLE 19. RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS

LSA Document #10-60(F)

Approximately 50 complaints/questions/comments regarding reporting issues are received and processed by this office each year for all matters regarding the business of the ginseng trade each year. The majority are requests for a dealer list by small businesses exporting ginseng from the US. Several dealers will request specific reporting assistance annually.

ARTICLE 20. HISTORIC PRESERVATION REVIEW BOARD

LSA Document #07-140(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 21. ARCHAEOLOGICAL REVIEW AND RECOVER

LSA Document #07-184(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 22. HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

LSA Document #07-192(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 22.5. CEMETERIES AND BURIAL GROUNDS; REGISTRATION AND MANAGEMENT

LSA Document #08-534(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 24. STATE MUSEUMS AND HISTORIC SITES

LSA Document #09-156(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 25. COAL MINING AND RECLAMATION OPERATIONS

LSA Document #07-146(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 26. GRANT PROGRAMS

LSA Document #10-161(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 27. FLOOD CONTROL REVOLVING FUND

LSA Document #09-199(F)

The Flood Control Revolving Fund was created by IC 14-28-5 in the 1950s, and intended to encourage local initiatives to solve local flooding and water resource problems. By statute, this Fund provides only to local units of government low interest loans to help finance relevant local flood control programs. By statute, this loan program can only be obtained by entities falling under the definition of *local unit* as set forth by IC 14-28-5-4. Local unit is defined as county, city, town, or special taxing district created by law such as a conservancy district. Therefore, this loan program is not available to small businesses.

No comments, complaints, and questions were received regarding the rule from small businesses, by the Small Business Regulatory Coordinator (SBRC) for LSA Document #09-199(F).

The number of complaints or questions reported that were resolved to the satisfaction of the agency and the small businesses involved.

ARTICLE 1. DEFINITIONS

LSA Document #08-286(F)

The questions were answered.

LSA Document #07-111(F)

It is believed that the questions received regarding definitions associated with riparian rights, public freshwater lakes, and navigable waters were answered to the satisfaction of the inquirers. However, it is unknown whether the inquiries were made by small businesses.

ARTICLE 3. ADJUDICATORY PROCEEDINGS

LSA Document #08-688(F)

The question was answered.

LSA Document #08-52(F)

It is believed that the questions received regarding adjudicatory proceedings were answered to the satisfaction of the inquirer and agency; however, it is unknown whether the questions were posed by small business.

ARTICLE 6.2. GREAT LAKES BASIN WATER MANAGEMENT

LSA Document #08-531(F)

An effort was made to answer the questions. The complaint expressed the perspective government is too large and was probably directed primarily to the statute, although the citizen went out of his way to emphasize he had no grievance with employees of the DNR or NRC or to their responsiveness. The law is at its genesis and the ultimate breadth of application is yet to be understood. The belief is the questions were adequately addressed. The probability is that the citizen who complained remains dissatisfied.

ARTICLE 9. FISH AND WILDLIFE

LSA Document #09-486(F)

All of the comments were resolved to the satisfaction of the DNR and businesses involved. The Natural Resources Commission voted to approve the rule changes as written.

LSA Document #09-60(F)

Three comments were resolved to the satisfaction of the DNR and businesses involved. The Natural Resources Commission voted to approve the rule change to allow youth hunters to take an antlered or antlerless deer during the special youth deer season.

LSA Document #09-44(F)

Two comments and one question were resolved to the satisfaction of the DNR and businesses involved. Short-barreled rifles are still legal, just under the handgun provisions, and the change allowing archery equipment and firearms to be loaded, or capable of being loaded, before and after lawful shooting hours was also approved. The other comment governing the use of crossbows was outside the scope of this rule package and, therefore, could not be made at that time.

ARTICLE 11. LAKE CONSTRUCTION ACTIVITIES

LSA Document #07-467(F)

Both questions were answered.

ARTICLE 12. WATER WELL DRILLING AND GROUND WATER

LSA Document #05-341(F)

All Inquiries regarding the construction of direct push wells were believed to be resolved to the satisfaction of the Division of Water and the small business during the most recent state fiscal year.

ARTICLE 18. ENTOMOLOGY AND PLANT PATHOLOGY

LSA Document #08-413(F) and LSA Document #09-85(F)

All questions are answered to the satisfaction of the agency and small businesses or members of the public in a timely manner.

ARTICLE 19. RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS

LSA Document #10-60(F)

The small business regulatory coordinator received one complaint that the entire process is too time consuming for a specific dealer to continue his business but we remain on good terms and he may return in the future. All other communications reached an amicable conclusion.

The total number of staff serving as coordinators under this section during the most recent state fiscal year

There were twenty-one (20) staff members serving as coordinators for a total of fifty-seven (57) rules under IC 4-22-2-28.1 during the State fiscal year 2009-2010.

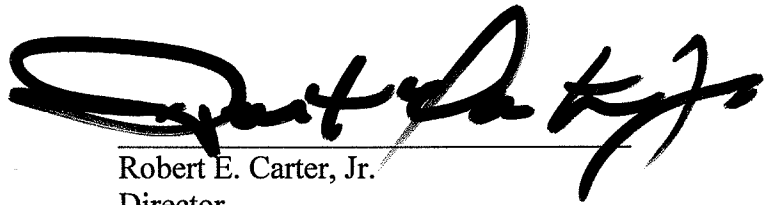
The agency's costs in complying with this section during the most recent state fiscal year

Total cost reported by the small business regulatory coordinators in the fiscal year 2009–2010 is \$8,963.95.

The projected budget required by the agency to comply with this section during the current state fiscal year

The projected budget required by the agency to comply with this section during the current 2010-2011 state fiscal year is \$9,235.45.

DATE: October 4, 2010

A large, stylized handwritten signature in black ink, likely belonging to Robert E. Carter, Jr. The signature is written over a horizontal line.

Robert E. Carter, Jr.
Director
Department of Natural Resources

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LSA Document #10-161(F)

(Administrative Cause Number 10-006T)

Filed with the Publisher: May 26, 2010, 10:37 a.m.

Small Business Regulatory Coordinator

Steve Morris, Director, Division of Outdoor Recreation, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W271 Indianapolis, IN 46204-2640, (317) 232-4751, smorris@dnr.in.gov

Document History

LSA Document #10-161(F)

Intent to Readopt Rules: 20100317-IR-312100161RNA

Filed with Publisher: May 26, 2010, 10:37 a.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

The small business regulatory coordinator did not file a report following ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #10-161(F) at its May 18, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated April 20, 2010:

...

C. NOTICE OF INTENT AND RECOMMENDATION FOR FINAL ACTION

On March 17, 2010, a "Notice of Intent to Readopt" 312 IAC 26 was posted to the *Indiana Register* at 20100317-IR-312100161RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 26 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section request to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The recommendation is for the Commission to approve for readoption 312 IAC 26, without amendment as attached in Exhibit "A", for subsequent filing with the Publisher.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Readopted Final Rule
LSA Document #10-161(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

312 IAC 26

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 26 GRANT PROGRAMS

LSA Document #10-161(F)

Intent to Readopt Rules: 20100317-IR-312100161RNA

Filed with Publisher: May 26, 2010, 10:37 a.m.

LSA Document #10-60(F)

(Administrative Cause Number 10-005N)

Filed with the Publisher: May 26, 2010, 10:36 a.m.

Small Business Regulatory Coordinator

Cary Floyd, Projects Coordinator, Division of Nature Preserves, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W267 Indianapolis, IN 46204, (317) 232-0207, cfloyd@dnr.in.gov

Document History

LSA Document #10-60(F)

Intent to Readopt Rules: 20100203-IR-312100060RNA

Filed with Publisher: May 26, 2010, 10:36 a.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

The small business regulatory coordinator did not file a report following ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #10-60(F) at its May 18, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated April 7, 2010:

...

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On February 3, 2010, a "Notice of Intent to Readopt" 312 IAC 19 was posted to the *Indiana Register* at 20100203-IR-312100060RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 19 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 19, without amendment as attached in Exhibit "A" for subsequent filing with the Publisher.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Readopted Final Rule
LSA Document #10-60(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

312 IAC 19

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 19 RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS

LSA Document #10-60(F)

Intent to Readopt Rules: 20100203-IR-312100060RNA

Filed with Publisher: May 26, 2010, 10:36 a.m.

LSA Document #10-51(F)

(Administrative Cause Number 10-001T)

Filed with the Publisher: May 26, 2010, 10:35 a.m.

Small Business Regulatory Coordinator

Steve Morris, Director, Division of Outdoor Recreation, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W271 Indianapolis, IN 46204-2640, (317) 232-4751, smorris@dnr.in.gov

Document History

LSA Document #10-51(F)

Intent to Readopt Rules: 20100203-IR-312100051RNA

Filed with Publisher: May 26, 2010, 10:35 a.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

The small business regulatory coordinator did not file a report following ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #10-51 at its May 18, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated March 10, 2010:

...

C. NOTICE OF INTENT AND RECOMMENDATION FOR FINAL ACTION

On February 3, 2010, a "Notice of Intent to Readopt" 312 IAC 6.5 was posted to the *Indiana Register* at 20100203-IR-312100051RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 6.5 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section request to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The recommendation is for the Commission to approve for readoption 312 IAC 6.5, without amendment as attached in Exhibit "A", for subsequent filing with the Publisher.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Readopted Final Rule
LSA Document #10-51(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

312 IAC 6.5

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 6.5 OFF-ROAD VEHICLES AND SNOWMOBILES

LSA Document #10-51(F)

Intent to Readopt Rules: 20100203-IR-312100051RNA

Filed with Publisher: May 26, 2010, 10:35 a.m.

LSA Document #10-38(F)

(Administrative Cause Number 10-004G)

Filed with the Publisher: March 25, 2010, 2:59 p.m.

Small Business Regulatory Coordinator

James AmRhein, Assistant Director, Division of Oil and Gas, Department of Natural Resources, Indiana Government Center South 402 West Washington Street, Room W293, Indianapolis, IN 46204 (317) 232-6961, jamrhein@dnr.in.gov

Document History

LSA Document #10-38(F)

Intent to Readopt Rules: 20100120-IR-312100038RNA

Filed with Publisher: March 25, 2010, 2:59 p.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

The small business regulatory coordinator did not file a report following ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #10-38(F) at its March 16, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated February 24, 2010:

...

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On January 20, 2010, a "Notice of Intent to Readopt" 312 IAC 17 was posted to the *Indiana Register* at 20100120-IR-312100038RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 17 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 16, without amendment, for subsequent filing with the Publisher.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Readopted Final Rule
LSA Document #10-38(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

312 IAC 17

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 17 OTHER PETROLEUM REGULATION

LSA Document #10-38(F)

Intent to Readopt Rules: 20100120-IR-312100038RNA

Filed with Publisher: March 25, 2010, 2:59 p.m.

LSA Document #10-37(F)

(Administrative Cause Number 10-002P)

Filed with the Publisher: March 25, 2010, 2:58 p.m.

Small Business Regulatory Coordinator

John Bergman, Assistant Director, Division of State Parks and Reservoirs, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W298, Indianapolis, IN 46204, (317) 232-4131, jbergman@dnr.in.gov

Document History

LSA Document #10-37(F)

Intent to Readopt Rules: 20100120-IR-312100037RNA

Filed with Publisher: March 25, 2010, 2:58 p.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

The small business regulatory coordinator did not file a report following ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #10-37(F) at its March 16, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated February 23, 2010:

...

C. NOTICE OF INTENT AND RECOMMENDATION FOR FINAL ACTION

On January 20, 2010, a "Notice of Intent to Readopt" 312 IAC 8 was posted to the *Indiana Register* at 20100120-IR-312100037RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 8 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section request to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The recommendation is for the Commission to approve for readoption 312 IAC 8, without amendment as attached in Exhibit "A", for subsequent filing with the Publisher.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Readopted Final Rule LSA Document #10-37(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

312 IAC 8

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 8 PUBLIC USE OF NATURAL AND RECREATIONAL AREAS

LSA Document #10-37(F)

Intent to Readopt Rules: 20100120-IR-312100037RNA

Filed with Publisher: March 25, 2010, 2:58 p.m.

LSA Document #10-33(F)

(Administrative Cause Number 10-003G)

Filed with the Publisher: March 25, 2010, 2:57 p.m.

Small Business Regulatory Coordinator

James AmRhein, Assistant Director, Division of Oil and Gas, Department of Natural Resources, Indiana Government Center South 402 West Washington Street, Room W293, Indianapolis, IN 46204, (317) 232-6961, jamrhein@dnr.in.gov

Document History

LSA Document #10-33(F)

Intent to Readopt Rules: 20100113-IR-312100033RNA

Filed with Publisher: March 25, 2010, 2:57 p.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

The small business regulatory coordinator did not file a report following ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #10-33(F) at its March 16, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated February 17, 2010:

...

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On January 13, 2010, a "Notice of Intent to Readopt" 312 IAC 16 was posted to the *Indiana Register* at 20100113-IR-312100033RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 16 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 16, without amendment, for subsequent filing with the Publisher.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Readopted Final Rule LSA Document #10-33(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

312 IAC 16

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 16 OIL AND GAS

LSA Document #10-33(F)

Intent to Readopt Rules: 20100113-IR-312100033RNA

Filed with Publisher: March 25, 2010, 2:57 p.m.

LSA Document #09-486(F)

(Administrative Cause Number 09-059D)

Filed with the Publisher: April 8, 2010, 1:49 p.m.

Small Business Regulatory Coordinator

Linnea Petercheff, Staff Specialist, Division of Fish and Wildlife, Department of Natural Resources, 402 W. Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-6527, lpetercheff@dnr.in.gov

Document History

LSA Document #09-486(F)

Notice of Intent: 20090708-IR-312090486NIA

Proposed Rule: 20091209-IR-312090486PRA

Hearing Held: January 7, 2010

Approved by Attorney General: April 6, 2010

Approved by Governor: April 8, 2010

Filed with Publisher: April 8, 2010, 1:49 p.m.

Documents Incorporated by Reference: None Received by Publisher

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On April 19, 2010, the Small Business Regulatory Coordinator, Linnea Petercheff, filed the following:

The number of comments, complaints, and questions received by the you from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

Comments were received from 46 individuals through the public comment phase of this rule promulgation. 43 comments could be from individuals who own or operate a small business, such as a deer farming operation. All of these 43 comments were in support of the rule changes.

The number of complaints or questions reported under subsection (1) that were resolved to the satisfaction of the agency and the small businesses involved; and

All of the comments were resolved to the satisfaction of the DNR and businesses involved. The Natural Resources Commission voted to approve the rule changes as written.

Estimated time spent carrying out your duties as SBRC during the most recent state fiscal year, categorized by LSA Document numbers involved.

Three (3) hours.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-486(F) at its March 16, 2010 meeting. The following is an excerpt from that meeting:

...

Michael Thommason, attorney for the Indiana Deer and Elk Farmers Association (IDEFA), addressed the Commission. He said that the rule was a product of collaboration between the IDEFA and DNR. "The staff has been delightful, they have been cooperative, and they have listened." He stated that the Governor's office has taken an interest in this particular product, realizing that farmers raising cervid elk and deer as primary product is an important industry. Thommason concluded stating that IDEFA "highly" approves and supports the rule.

Thommason noted language error on page 15, (B) of the report which reads, "Periodic crowding of animals of less than four (4) months of age may be necessary for the following." He said that the language did not make sense. "It was discovered late in the game" and it was decided that the language would better read "Periodic crowding of animals for a period of up to four (4) months, may be necessary for the following." He stated that animals under four months can't receive tuberculosis inoculations. "That's the only glitch in this thing. It's a great rule, and we appreciate this opportunity." Thommason noted that he understood through discussions with Jensen and Linnea Petercheff that this rule language would be corrected at a later date through the exotic mammal rule.

The Chair noted that Sandra Jensen had informed him of the error in the rule.

Mark Ahearn asked Thommason if "something bad would happen" if section (B) were removed from the rule.

Thommason replied, Yes, I think so. There are times when you're going to have animals together for a period of time, which may fall contrary to overcrowding." He stated that section (B) needed to be in the rule, in order prevent violation of any other rule, "because there are particular reasons for having this kind of provision in there."

Brad Thurston, a retired physician, who stated that he has raised deer for over 30 years, addressed the Commission with respect to the fence requirements. He explained that there is only one source of research that supports the need for a fence over eight feet high. According to Thurston, the 24 captive deer used in that research project were actually taught to jump over that height of fence. Thurston stated that even after being taught and being "pushed" with dogs, people and other forms of harassment only 15% were able to jump over an eight foot fence. Thurston noted that the state of Michigan has a ten-foot fence rule for the reason that "The eight-foot has to be an effective height." He said that with Michigan's heavy snow cover, you can have a fence height that is less than an effective eight-foot."

Thurston said that he has studied deer diseases for the past 15 years and expressed his opinion that this rule has the best possible rule to prevent disease transmission. "This has been a remarkable effort, for the first time in 30 years I've been doing it, that the DNR has come to the table and we've been able to work together and form the best possible policy for both sides." Thurston said he "strongly" recommended adoption of the rule as presented.

Donald Ruch asked for Thurston's to comment on the advantage of a single fence over a double fence for the prevention of spreading diseases.

Thurston replied that the reason people have pushed for a double fence was concern of nose to nose contact with wild deer. He stated that a double fence takes up a "huge" area because the fences have to be wide

enough that you can mow between them. Thurston also noted that it's a huge cost, it costs about five-dollars (\$5.00) a linear foot." He said that in one case it was discovered that disease was transmitted from the wild into the pen by ravens and not nose to nose contact. Thurston noted that a more effective method than a double fence would be a single "hot wire." He noted that a single hot wire on the inside of the fence, will keep the captive animal away.

Thurston referenced Mark Ahearn's question concerning periodic crowding. He informed that many of the farmers perform artificial insemination and tuberculosis testing, which often requires periodic pen crowding. He said the test results are then read several days later. If the cervid are moved, another test would have to be performed in 90 days, which could result in a re-catch by use of tranquilizers. He noted that the "periodic crowding" makes it much safer and humane for the animals.

The Chair said "There is great good will that has been created through this process, which certainly we don't want to disrupt and we know you have been very active in working with our staff." He noted that the Commission also received comments during previous meetings concerning the validity of fencing and security. The Chair then asked Mark Reiter, Director for the Division of Fish and Wildlife, if he had any comments concerning the fencing issue.

Mark Reiter said that the Division of Fish and Wildlife is "very very concerned about disease transmission." We have evidence that ten-foot is required and we would like to see if there wasn't a way where we can get to that ten foot, on down the road through some common agreement.

John Davis made reference to another rule "traveling" through the Commission's process.

Sandra Jensen commented that rule being amended in this rulemaking is the same rule that was preliminarily adopted in January of 2010 for additional amendments to address the Cervid Game Breeder License. She explained that the rule has already been submitted to the Office of Management and Budget (OMB) for fiscal review and any additional fencing requirements would likely pose some fiscal change. Therefore, Jensen noted that the rule would probably have to be recalled from OMB and resubmit it with the additional fiscal information. Jensen observed, however, that an amendment to that rule would pose a much shorter delay than allowing that one to go all the way through the process and then start this again at some later point.

The Chair asked if it would be reasonable to adopt the proposed rule "as it stands" and "charge the further discussion through the exotic rule going through the addressing of the fencing issue."

Jensen replied, "I certainly think that it makes perfect sense. One of the things that I heard from Mr. Thommason speaking on behalf IDEFA and others at the public hearings was that this is great for them because it's a black and white that they've never had before. They want this to go forward." Jensen stated that she "personally" felt that conservation officers would benefit as well.

The Chair asked Michael Thommason for his thoughts.

Thommason commented, "I think that is the only way to go on this," noting that two years worth of effort has gone into this rule.

The Chair said, "So, we've created more good will. I like that."

Rick Miller, President of IDEFA, expressed to the Commission his belief that no other farmer or rancher goes to greater lengths to protect the health of their animals.

Jane Ann Stautz noted that the fencing requirements contained in this rule are consistent with those requirements of the Indiana Board of Animal Health. She observed that in further considering the fencing requirements the Department should communicate and consider consistency with the Board of Health."

The Chair noted that the Commission's mission goes this industry and is to ensure that "we protect the people's animals", as well. And, I think that's where we hear, there is a discrepancy on height of a fence, and that's what we're addressing.

Doug Allman noted that he would like for the rule to include a ten foot fence requirement. Allman noted that he sat on the cervid committee for two years and at one time there was an agreement for ten-foot fencing with a single strand of barbed wire. According to Allman the industry's own expert testimony concluded that deer could jump an eight-foot fence.

Patrick Early moved for the approval the proposal "as it stands" with the Commission looking at the fence issue as part of the exotic animal rule. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

...

Excerpt from Hearing Officer Report dated February 10, 2010:

...

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

The public hearing was conducted as scheduled on January 7, 2010 at 6:00 p.m. at Pike Township Public Library, 6525 Zionsville Road, Indianapolis, Indiana. Hearing Officer, Sandra Jensen, was present along with Linnea Petercheff of the Department's Division of Fish and Wildlife. The following public comments were received:

Michael L. Thomasson, Indianapolis, Indiana

Mr. Thomasson reported being the attorney for the Indiana Deer and Elk Farmers Association (IDEFA). He stated that IDEFA has read the regulation thoroughly and are in total agreement with the wording. He noted the organization believed that the rule is a very fair and thoughtful product. IDEFA is totally supportive of the regulation. Mr. Thomasson noted by a show of hands that nearly everyone in attendance at the public hearing is a member of IDEFA observing that as an organization they wanted to show support for the Department's efforts. Mr. Thomasson noted that many of the people in attendance traveled a long distance in very bad weather to attend the meeting. He also expressed that the Department has done a "marvelous job" with this rule language and the "effort is very appreciated."

Frank Keaton, Brownsburg, Indiana

Mr. Keaton stated that he is the vice president of IDEFA and a deer farmer. He stated that he supports the language of the proposed rule and believes it will clear up confusion that has existed in the past and will allow the Department and the deer farmers to go forward in a positive way.

Junior Anderson, Nappanee, Indiana

Offered his support for the rule as proposed adding that it is very important to have language like what is proposed by the Department in order to avoid conflict in the future.

Donald J. Schmucker, Milford, Indiana

Offered his support for the rule as proposed. He observed that the rule language clarifies a lot of things that pertain to the white tail industry. It protects the industry but through the establishment of housing and animal welfare requirements it also protects the animal.

Marlin J. Miller, Milford, IN; Jesse M. Miller, Milford, IN; John E. Schwartz, Bremen, IN; Kevin Hershberger, Milford, IN; Allen Schwartz, Milford, IN; Lonnie D. Whetstone, Nappanee, IN; Jerry Schwartz, Bremen, IN; Howard Schmucker, Bremen, IN; Cliff Carly, Indianapolis, IN; Vernon Miller, Shipshewana, IN; Earnest F. Miller, Shipshewana, IN; Don Morris, Converse, Indiana; Brad Thurston, Owen, IN, board member of IDEFA; Jim Staats, Bloomington, IN; Wilbur Lehman, LaGrange, IN; Sam Schrock, LaGrange, IN; Mark Otto, LaGrange, IN; Kenneth Whetstone, Topeka, IN; Norman Stutzman, LaGrange, IN; Jay Dee Lehman, Shipshewana, IN; Orva Whetstone, Topeka, IN; Virgil Bontrager, Shipshewana, IN; Ezra Bontrager, Shipshewana, IN; Devon Yoder, Shipshewana, IN; Paul Yoder, Shipshewana, IN; Marcus Miller, Middlebury, IN; Lamar Miller, Amboy, IN; Marvin Whetstone, Topeka, IN; Lavern Stutzman, LaGrange, IN;

Each of the above listed persons offered their support for the rule as proposed.

b) Comments Received Outside Public Hearing

The following written comments were received from members of the public outside of the public hearing held on January 7, 2010.

John Kevin Haendiges, Ramsey, IN (email: July 17, 2009)

I adamantly oppose game farming of any variety, particularly that consisting of legal game species. I oppose any effort to legitimize this activity; I do not support any proposal that facilitates perpetuation of this activity in our state.

Mike McCartin, Allen County, IN (email: August 18, 2009)

Game breeding should be immediately outlawed - if we need to have deer reduction hunts to "reduce the herd" why in God's name allow breeders to ADD to the over population.

Rick Miller, IDEFA, Columbus, IN (email: January 7, 2010)

I think it is a good thing IDNR is finally working with the cervide ranchers and farmers on a lic that is more so to fit them versus a permit for wild cervide. In the purpose of raising these farm raised mammals IDEFA needed a lot clearer version of the rules on the permit of farm raised cervide. I hope your committee approves these changes for the cervide FARMERS in the state of INDIANA to help understand the laws and preserve the right to raise these mammals with no argument with the difference between wild and farm raised.

Nathan Morrett, Indiana Deer Farmers, St. Joseph County (email: January 11, 2010)

I along with Eddie Ray Borkholder, Mark Borkholder, Verle Miller and David Borkholder where unavailable to attend the meeting but we all agree and approve the new game breeders permit and would like to see it go thru.

William C. Herring, Martinsville, IN

I had planned to comment in person at the public hearing regarding proposed Game Breeder License rule changes (LSA# 09-059D or 09-486) held at 6:00 PM January 7, 2010 at Pike Twp. Library, 6525 Zionsville Rd., Indianapolis, IN. The winter snowstorm caused a change in plans. Here are my comments submitted before the extended deadline of January 15, 2010. A major problem with the proposed rule regarding white-tailed deer is the gross inadequacy in security of perimeter fencing. Specifically, the current and proposed 8-foot tall fence is not adequate to prevent all deer from jumping it. This could be improved by calling for a 10-foot tall fence, or the addition of a Y or T-shaped extension on top of 8 foot fences as used in modern industrial, commercial, and prison security fences. However, a single fence, regardless of type or height is not adequate. The perimeter fencing must be a separated, double fence to prevent deer from exchanging body fluids or contacting fencing or adjacent ground where deer have rubbed, licked, urinated, or defecated. Additionally, the rule should contain a provision that all tall trees must be removed from both sides of the perimeter fence. The purpose is to prevent a tree or large limb from breaching the fence when it falls because of a windstorm or other reasons.

Additionally, the proposed rule should prohibit perimeter fences from crossing defined stream channels (as opposed to overland runoff) or require an engineering certification that the fence is designed and built to remain intact even during flash flooding events that can otherwise breach fences. Behind the need to greatly improve perimeter fencing security is the IDNR obligation to require design, construction, and maintenance so that there is virtually no chance that deer inside the facility can escape, no wild deer can enter, and that there is virtually no chance that diseases such as bovine TB and CWD can be spread to the wild deer population through either direct contact with confined animals or their saliva, urine, or feces. If we continue to be lax in security we will likely see even more severe outbreaks of disease. It looks like Indiana may have "dodged the bullet" last summer with the bovine TB incident that focused on a captive deer operation. However, with just one or two more outbreaks there is the very real possibility that the result would be the destruction of tens of thousands of deer (wild and captive) and domestic cattle. In the short term literally millions of dollars could be spent testing and depopulating deer and cattle. In the longer term all Hoosier farmers (and taxpayers) stand to lose millions of dollars because of the resulting quarantine, testing, depopulation, falling beef prices, and the whole economic ripple effect, including that related to deer hunting.

I urge IDNR to do the right thing. Greatly tighten security of perimeter fencing as noted above as long as people are allowed to possess deer under the Game Breeder License (GBL). Ultimately, you also need to completely eliminate deer from the list of animals that may be possessed under the GBL. This will prevent

many severe, perhaps catastrophic, disease problems in the future. Let Indiana take the lead in the Midwest. Let us learn from the mistakes of other states before it is too late. Several years ago IDNR granted GBL holders the PRIVILEGE of possessing deer under that license. I objected to it at the time. It seems that my worst fears were well founded. It is high time for the IDNR to take back that privilege. If the State can grant a privilege, it can take it back.

John R. Murrell, Indiana Deer And Elk Farmers Association, Dunkirk, IN (Email: January 12, 2010)
I, along with a majority of the members of the Indiana Deer and Elk Farmers Assoc. are in full support of the proposed changes to the game breeders permit. We feel that these changes are positive as they clarify the rules governing the farming of whitetail deer. Additionally, we feel that the proposed language changes should foster a beneficial working relationship between DNR and the cervid farming community.

Lori Butler, Lizton, IN (FAX: January 8, 2010)
I am in favor of proposed rule LSA Document #09-486.

Tammy Keeton, Arcadia, IN (FAX: January 7, 2010)
I support the new rules for the game breeders.

Calvin Grimes, Bainbridge, IN (FAX: January 8, 2010)
I support the new game breeders rule.

Jolene Borkholder, Bremen, IN
I am in favor of the changes in the deer breeders Lic. #.

O. Lamar Borkholder, Bremen, IN
I approve the changes in the deer breeders lic.

Darrin Borkholder, Bremen, IN (Regular Mail: January 14, 2010)
My name is Darrin Borkholder and I approve of the changes made to the Deer Breeders License.

Marcus Borkholder, Bremen, IN (Regular Mail: January 14, 2010)
I approve of the changes in the deer breeders license. Thanks a lot. This will help out greatly.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-486(F)

DIGEST

Amends 312 IAC 9-10-4 governing game breeder licenses to clarify requirements for the housing and sale of wild animals possessed under the license, including white-tailed deer. Effective 30 days after filing with the Publisher.

312 IAC 9-10-4

SECTION 1. 312 IAC 9-10-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-4 Game breeder licenses

Authority: IC 14-10-2-4; IC 14-22-2-6; IC 14-22-20

Affected: IC 4-21.5; IC 14-22-20.5-2

Sec. 4. (a) ~~An application~~ **A person shall apply** for a license as a game breeder ~~of one (1) or more of the following species of wild animals (common names are included for public convenience, but the scientific names control) shall be made on a departmental form.~~

(b) A license holder under this section may possess one (1) or more of the following:

- (1) Ring-necked pheasant (*Phasianus colchicus*).
- (2) Bobwhite quail (*Colinus virginianus*).
- (3) White-tailed deer (*Odocoileus virginianus*).
- (4) Eastern cottontail rabbit (*Sylvilagus floridanus*).
- (5) Gray squirrel (*Sciurus carolinensis*).
- (6) Fox squirrel (*Sciurus niger*).
- ~~(7) Southern flying squirrel (*Glaucomys volans*).~~
- ~~(8) (7) Beaver (*Castor canadensis*).~~
- ~~(9) (8) Coyote (*Canis latrans*).~~
- ~~(10) (9) Gray fox (*Urocyon cinereoargenteus*).~~
- ~~(11) (10) Red fox (*Vulpes vulpes*).~~
- ~~(12) (11) Mink (*Mustela vison*).~~
- ~~(13) (12) Muskrat (*Ondatra zibethicus*).~~
- ~~(14) (13) Opossum (*Didelphis marsupialis*).~~
- ~~(15) (14) Raccoon (*Procyon lotor*).~~
- ~~(16) (15) Striped skunk (*Mephitis mephitis*).~~
- ~~(17) (16) Long-tailed weasel (*Mustela frenata*).~~
- ~~(18) (17) Least weasel (*Mustela nivalis* or *Mustela rixosa*).~~

(c) Notwithstanding subsection (b), a license holder under this section may lawfully acquire and possess a white-tailed deer that is:

- (1) privately-owned;**
- (2) legally obtained;**
- (3) born in captivity; and**
- (4) possessed by a cervidae livestock operation in accordance with IC 14-22-20.5-2.**

(d) A license holder under this section may lawfully acquire and possess the following:

- (1) Furbearing mammals and eastern cottontail rabbits that must have been one (1) of the following:**
 - (A) Lawfully taken in season.**
 - (B) Born in captivity.**

- (2) Fox squirrels and gray squirrels that must have been born in captivity.
- (3) Ring-necked pheasants and bobwhite quail that must have been hatched in captivity.

(e) A license holder under this section may possess the following:

(1) White-tailed deer and their products for:

- (A) breeding;
- (B) propagating;
- (C) purchasing;
- (D) marketing; and
- (E) selling;

under IC 14-22-20.5.

(2) Furbearing mammals, squirrels, and eastern cottontail rabbits for breeding purposes under IC 14-22-20.

(3) Ring-necked pheasants and bobwhite quail for:

- (A) breeding purposes;
- (B) food; or
- (C) release.

~~(b) An application~~ (f) A person must apply for a license under this section ~~must be made~~ within five (5) days after the:

- (1) acquisition of an animal within Indiana; or
- (2) importation of an animal into Indiana.

Each cage or enclosure will for these animals must be inspected by a conservation officer before a license may be issued.

~~(e)~~ (g) A license holder under this section may add a species to a game breeder license other than those identified in the application upon:

- (1) an inspection by a conservation officer; and or
- (2) approval by the division of fish and wildlife.

A conservation officer must be notified within five (5) days of acquisition of the new species.

~~(d) Each animal possessed under this section must be lawfully acquired. A receipted invoice, bill of lading, or other satisfactory evidence of lawful acquisition shall be presented for inspection upon the request of a conservation officer. Game or furbearing mammals or game birds, other than wild turkeys, lawfully taken in season may be retained alive after the close of the season. Any person wishing to import:~~

(h) A license holder under this section who imports:

- (1) any live animal under this license; or
- (2) the eggs of birds covered under this license;

must secure a certificate of veterinary inspection from an accredited veterinarian in the state of origin before the animal is shipped into Indiana. Documentation in the form of a copy of a valid game breeder license or valid dated receipt that establishes lawful acquisition or ownership must accompany any transportation of wild animals.

(i) A license holder under this section must present at least one (1) of the following for inspection upon the request of a conservation officer for each animal possessed:

- (1) A receipt.
- (2) An invoice.
- (3) Other satisfactory evidence of lawful acquisition, including documentation of natural birth.

~~(e)~~ (j) For ring-necked pheasants, bobwhite quail, furbearing mammals, eastern cottontail rabbits, fox squirrels, and gray squirrels, the following requirements apply:

- (1) A wild animal must be confined in a cage or other enclosure that:
 - (A) makes escape of the animal unlikely; and
 - (B) prevents the entrance of a free-roaming animal of the same species.
- (2) The cage or enclosure shall be large enough to: provide

(A) allow the wild animal with ample space for exercise and to avoid overcrowding, to turn about freely; and

(B) make normal postural adjustments.

(3) All chainlink or welded wire edges shall be:

(A) smoothly secured to prevent injury to the animals; and be

(B) kept properly repaired. The enclosure for white-tailed deer must have a perimeter fence consisting of at least a single eight (8) foot fence.

(4) Night quarters, holding pens, and nesting boxes may not be used as primary housing.

(5) The following shall be provided as required for the comfort of the particular species of animal:

(1) (A) Fresh water.

(2) (B) Rainproof dens.

(3) (C) Nest boxes.

(4) (D) Windbreaks.

(5) (E) Shelters.

(6) (F) Shade.

(7) (G) Bedding.

(6) Each animal shall be handled, housed, and transported in a sanitary and humane manner.

(7) An enclosure must be provided with sufficient drainage to prevent standing water from accumulating.

(8) The cages or other enclosures must be made available upon request for inspection by a conservation officer.

(k) For white-tailed deer, the following enclosure requirements apply:

(1) The enclosure must have a perimeter fence with a height of at least eight (8) feet from the ground to the top of the fence at all parts of the structure to:

(A) make the escape of an animal unlikely; and

(B) prevent the entrance of a free-roaming animal of the same species.

(2) Fence bottoms shall be installed at or near ground level but not more than six (6) inches above ground level.

(3) If topographic, natural, or other conditions exist that would enable an animal to pass through, over, or under the fence, the permit holder must supplement the fence as necessary to prevent egress.

(4) Perimeter fencing materials shall be of a fencing strength, weave, and construction that prevents the escape of an animal into the wild and may include, but are not limited to, high tensile game fence that is at least fourteen and one-half (14 1/2) gauge, chainlink fence of at least nine (9) gauge, welded wire fence of at least twelve and one-half (12 1/2) gauge, wood fence, or farm buildings.

(5) All chainlink or welded wire fence edges shall be:

(A) smoothly secured to prevent injury to the animals; and

(B) kept properly repaired.

(6) The license holder under this section or the license holder's designees must maintain the perimeter fencing in good condition at all times.

(7) The license holder under this section or the license holder's designees must maintain a log of perimeter fence inspections that records the following:

(A) The inspection date.

(B) The inspection time.

(C) The individual performing the inspection.

(D) Any noted deficiencies or repairs made.

(8) A license holder under this section must report the escape of any white-tailed deer possessed under this section to a conservation officer within twenty-four (24) hours after knowledge of the escape or knowledge of potential escape. Knowledge of potential escape shall include, but not be limited to, significant damage to the perimeter fence that is likely to allow escape or the license holder is unable to account for all of the animals possessed under this license, or both.

(9) A license holder under this section shall secure and install padlocks on all remote perimeter gates.

(10) Upon a request by a conservation officer, any enclosure must be made available for inspection.

(l) To provide for the comfort and overall health of each white-tailed deer possessed under this section, the license holder shall provide the following:

(1) Fresh water must be provided as follows:

(A) Available at all times.

(B) May be provided by:

(i) public water utilities;

(ii) wells;

(iii) cisterns;

(iv) ponds; or

(v) streams.

(2) Feed must be provided as follows:

(A) Where adequate pasture or natural vegetation is available to meet the nutritional needs of each animal, supplemental feeding is not necessary.

(B) Where adequate pasture or natural vegetation is not available to meet the nutritional needs of each animal, supplemental feed or a complete feed ration must be made available to prevent:

(i) malnutrition;

(ii) poor body condition;

(iii) debility;

(iv) stress;

(v) illness; or

(vi) disease.

(3) Windbreaks, shelters, and shade must be provided as follows:

(A) Protection of each animal from the extreme elements of heat, cold, or wind must be provided at all times and in all enclosures where animals are housed.

(B) Protection from the elements may include, but shall not be limited to, one (1) or more of the following:

(i) Barns.

(ii) Shelters.

(iii) Man-made or natural windbreaks.

(iv) Tarps.

(v) Shade cloth.

(vi) Trees.

(vii) Hedge rows.

(viii) Tall grass and weeds.

(4) Bedding must be provided as follows:

(A) Each enclosure must provide high ground, shelters, or bedding areas that prevent the animal from lying or standing in mud or water that is ankle deep for more than ten (10) consecutive days.

(B) Each enclosure used to house white-tailed deer must be provided with sufficient drainage to prevent stagnant water or deep mud throughout the enclosure such that the animals in the enclosure can turn about freely and obtain food and water without standing in stagnant water or deep mud.

(5) Enclosures must be provided as follows:

(A) Each enclosure shall be large enough to allow the animal to:

(i) turn about freely; and

(ii) make normal postural adjustments.

(B) Periodic crowding of animals of less than four (4) months of age may be necessary for the following:

(i) Wintering of animals and pasture preservation.

(ii) Breeding.

(iii) Medicating or vaccinating, or both.

(iv) Tuberculosis and brucellosis testing to maintain herd status.

(v) Handling and tranquilization.

(6) Each white-tailed deer shall be handled, housed, and transported in a sanitary and humane manner.

(m) An animal possessed under this section may be administered a pharmaceutical product in accordance with state and federal laws and approved by a state or federal agency for the purpose of prevention or treatment of any of the following:

(1) Malnutrition.

(2) Illness.

- (3) Disease.
- (4) Injury.
- (5) Stress.

A licensed veterinarian may administer to an animal an immobilizing agent, tranquilizer, or drug for euthanasia in compliance with all state and federal laws. A license holder under this section or authorized handler may use an immobilizing agent or tranquilizer, as directed by a licensed veterinarian, to assist in the safe handling and transportation of white-tailed deer.

(n) Each white-tailed deer possessed under this section must be individually and uniquely identified in accordance with 345 IAC 2-7 prior to leaving the license holder's premises.

(o) A license holder under this section that possesses white-tailed deer must do the following:

- (1) Register with the state veterinarian each location where white-tailed deer are being kept and acquire a premises identification under 345 IAC 2-7.
- (2) Register with the state veterinarian and enroll in the chronic wasting disease (CWD) program under 345 IAC 2-7.
- (3) Adhere to Indiana cervidae importation requirements as designated by the state veterinarian. Prior to importation, a permit from the state veterinarian must be acquired under 345 IAC 1-3 and 345 IAC 2-7.
- (4) Handle all deaths of cervidae older than twelve (12) months of age as follows in accordance with 345 IAC 2-7:
 - (A) Report each incident to the state veterinarian.
 - (B) Test each disease-susceptible cervid for CWD if suitable for testing.
 - (C) Follow CWD sample submission protocol that is designated by the state veterinarian.
- (5) Allow for an annual herd inspection by the Indiana state board of animal health and provide records under 345 IAC 2-7 for the following:
 - (A) Official cervid identifications.
 - (B) Additions and removals from herd that include dates, names, addresses, or contact information.
 - (C) Postmortem reports.

~~(p) No~~ (p) A license holder under this section shall not release wild animals ~~may be released~~ possessed under this section except for bobwhite quail and ring-necked pheasants. A license holder under this section shall not release known diseased bobwhite quail and ring-necked pheasants. ~~may not be released. A license holder must report the escape of any white-tailed deer to a conservation officer within twenty-four (24) hours.~~

~~(g) A known diseased wild animal possessed under this section shall not be sold.~~

(q) A license holder under this section must not sell a wild animal possessed under this section if the animal is known to be diseased.

(r) White-tailed deer and their products may be sold in Indiana in accordance with IC 14-22-20 or out of state for any legal purpose.

~~(h)~~ (s) A license holder under this section must comply with all applicable state, local, or other federal laws that govern the possession and sale of the animals possessed under this section.

~~(i)~~ (t) A license holder under this section shall do the following:

- (1) Maintain an inventory of all wild animals possessed under this section.
- ~~(1)~~ (2) Record all additions and deletions to the inventory for every wild animal that is:
 - (A) born or has died;
 - (B) sold;
 - (C) traded;
 - (D) loaned;
 - (E) bartered; or
 - (F) given to another person;

on a signed departmental form or computerized record **with a signature that is either electronic or in ink. If recorded on a departmental form, the person must complete the form in ink.**

~~(2)~~ (3) Keep a copy of the **complete and accurate** inventory on the premises of the game breeder. **and**

~~(4)~~ **Provide** a copy ~~must be provided of the inventory~~ to a conservation officer upon request.

~~(3)~~ **(5)** Issue a valid, dated receipt **prepared in ink** for all animals **or their products that are sold, traded, bartered, or gifted** and include the following information:

(A) Game breeder license number.

(B) Buyer and seller name and address.

(C) Number of animals **or products** sold.

(D) Species of animal sold.

A copy of all of the receipts issued must be on the premises of the game breeder for at least ~~two~~ **(2) five (5)** years after the year of the transaction.

~~(j)~~ **(u)** A license expires on December 31 of the year the license is issued. The license holder must file an application with the division by February 15 of each year in order to renew the license. The annual report must accompany the renewal application and shall include for each species possessed under this license the number:

(1) bought;

(2) sold;

(3) born;

(4) traded;

(5) gifted;

(6) of deaths; and

(7) on hand.

~~(k)~~ **(v)** A conservation officer may enter the premises of the license holder at all reasonable hours to ~~inspect those premises and any records relative to the license. The conservation officer shall immediately conduct an inspection in accordance with subsections (w) and (x).~~

(w) During an inspection, the license holder or the license holder's designee shall comply with both of the following:

(1) Meet the conservation officer at the time of inspection to provide access to all enclosures where animals possessed under a license issued under this section are housed.

(2) Provide access to all records relative to the license issued under this section.

(x) While conducting an inspection, the conservation officer must comply with the following:

(1) Upon request of the license holder or the license holder's designee and prior to entering the enclosure where animals are housed, follow appropriate sanitation practices to prevent the spread of disease if the license holder provides sanitation supplies or protective equipment.

(2) Give due consideration to the safety and welfare of the animals.

(3) Notify the license holder if the inspection reveals ~~that the wild animals are being kept under unsanitary or inhumane conditions. a violation of this section or IC 14-22-20.~~ The conservation officer may make a second inspection ~~after ten~~ **(10) no sooner than fifteen (15) days and after the reported violation unless critical conditions exist as determined at the reasonable discretion of the conservation officer.** The

(1) license may be suspended or revoked under IC 4-21.5 and

(2) wild animals may be confiscated

if the license holder fails to ~~comply with a provision~~ **correct the violation** of the license requirements.

~~(h)~~ **(y)** A license may be suspended, denied, or revoked under IC 4-21.5 if the license holder fails to comply with any of the following:

(1) A provision of a license issued under this section.

(2) IC 14-22-20.

(3) All applicable state, local, or other federal laws.

(Natural Resources Commission; 312 IAC 9-10-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Jan 26, 2004, 10:45 a.m.: 27 IR 1789; filed Jan 8, 2007,

9:11 a.m.: 20070207-IR-312060193FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Apr 8, 2010, 1:49 p.m.: 20100505-IR-312090486FRA)

LSA Document #479(F)

(Administrative Cause Number 09-026D)

Filed with the Publisher: March 12, 2010, 1:28 p.m.

Small Business Regulatory Coordinator

Linnea Petercheff, Staff Specialist, Division of Fish and Wildlife, Department of Natural Resources, 402 West Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-6527, lpetercheff@dnr.in.gov

Document History

LSA Document #09-479(F)

Notice of Intent: 20090701-IR-312090479NIA

Proposed Rule: 20091111-IR-312090479PRA

Hearing Held: December 3, 2009

Approved by Attorney General: February 26, 2010

Approved by Governor: March 9, 2010

Filed with Publisher: March 12, 2010, 1:28 p.m.

Documents Incorporated by Reference: 50 CFR 16; 50 CFR 20; 50 CFR 21, Subpart D; 9 CFR, Chapter 1, Subchapter A, Parts 1 - 4

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On March 18, 2010 the Small Business Regulatory Coordinator, Linnea Petercheff, filed the following:

The number of comments, complaints, and questions received by the you from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

None

The number of complaints or questions reported under subsection (1) that were resolved to the satisfaction of the agency and the small businesses involved; and

None

Estimated time spent carrying out your duties as SBRC during the most recent state fiscal year, categorized by LSA Document numbers involved.

Twenty (20) minutes

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-479(F) at its January 12, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated December 16, 2009:

...

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

The public hearing was conducted as scheduled on December 3, 2009 at 1:00 p.m. at Natural Resources Commission, Division of Hearings, Indiana Government Center North, Room N-501, 100 North Senate Avenue, Indianapolis, Indiana. Hearing Officer, Sandra Jensen, was present along with Linnea Petercheff of the Department's Division of Fish and Wildlife. No members of the public appeared.

b) Comments Received Outside Public Hearing

The following written comments were received from members of the public outside of the public hearing held on December 3, 2009.

Doug Allman; Fishers, Indiana

In looking over propose changes to administrative rule it appears there may be some inconsistency between Indiana code and administrative rules as it relates to game birds and game bird habitat stamp. Please look into this as I believe it the public is served by consistency and clarification.

c) Response by the Department of Natural Resources

The Department of Natural Resources offered the following response to the public comments.

DNR RESPONSE

Non-Migratory Game Birds

The definition of "game bird" as it applies to the game bird habitat restoration stamp in IC 14-22-8-2 was modified by the Indiana General Assembly in 2009 to include mourning doves. As a result, the definition of game bird in 312 IAC 9-1-7.5 must be modified to include mourning doves to provide for consistency. Additionally, a few technical modifications to 312 IAC 9-4-7.5 are also needed to clarify that the game birds referenced in that rule do not include mourning doves.

Proposed Language:

312 IAC 9-1-7.5 "Game bird" defined

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 2. "Game bird" means pheasant, quail, grouse, wild turkey, and mourning dove. *(Natural Resources Commission; 312 IAC 9-1-14.6)*

312 IAC 9-4-7.5 General Requirements for Non-Migratory Game Birds

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 7.5. (a) An individual must not possess the carcass or parts of a:

- (1) ring-necked pheasant (*Phasianus colchicus*),**
- (2) northern bobwhite quail (*Colinus virginianus*),**

- (3) ruffed grouse (*Bonasa umbellus*), or
 - (4) wild turkey (*Meleagris gallopavo*)
- unless that person lawfully took that species as follows:
- (1) during the season established for that species in this rule,
 - (2) with a scientific purposes license pursuant to 312 IAC 9-10-6,
 - (3) with a special purpose salvage permit pursuant to 312 IAC 9-10-13.5.

(b) Notwithstanding subsection (a), an individual who lawfully takes a species listed under this section may give to another individual one (1) or more carcasses or parts of these game birds, with no compensation of any kind. A game bird that is gifted must have a tag attached that contains the following information:

- (1) the hunter's name and address,
- (2) the total number and species of birds taken,
- (3) the date such bird were taken, and
- (4) the signature of the hunter who took the birds.

(c) A carcass of a game bird listed under this section may be possessed by the following:

- (1) the individual who lawfully took the bird during the season established for that bird;
- (2) an individual who received the carcass pursuant to subsection (b);
- (3) an individual with a valid taxidermy license pursuant to IC 14-22-21 and 312 IAC 9-10-5;
- (4) an individual with a valid scientific purposes license pursuant to 312 IAC 9-10-6;
- (5) an individual with a valid nuisance wild animal control permit pursuant to 312 IAC 9-10-11;
- (6) an individual with a valid special purpose salvage permit pursuant to 312 IAC 9-10-13.5.

(d) A person may possess live northern bobwhite quail or ring-necked pheasants only with a:

- (1) game breeder license pursuant to IC 14-22-20 and 312 IAC 9-10-4;
- (2) dog training ground permit pursuant 312 IAC 9-10-16 for a period of less than five (5) consecutive days only;
- (3) private shooting preserve license pursuant to IC 14-22-31; or
- (4) scientific purposes license pursuant to 312 IAC 9-10-6; or
- (5) wild animal rehabilitation permit pursuant to 312 IAC 9-10-9.

(e) An individual must not hunt any of the following species unless the individual wears hunter orange:

- (1) ring-necked pheasants (*Phasianus colchicus*).
- (2) northern bobwhite quail (*Colinus virginianus*).
- (3) ruffed grouse (*Bonasa umbellus*).

(f) A person must not sell northern bobwhite quail or ring-necked pheasants, including their eggs, except under a valid game breeder license pursuant to IC 14-22-20 and 312 IAC 9-10-4.

(g) A person must not sell ruffed grouse or wild turkeys, including their eggs.

(h) A person must not possess ruffed grouse or wild turkeys, including their eggs, except under one of the following:

- (1) wild animal rehabilitation permit pursuant to 312 IAC 9-10-9,
- (2) scientific purposes license pursuant to 312 IAC 9-10-6,
- (3) special purpose salvage permit pursuant to 9-10-13.5, or
- (4) taxidermy license pursuant to IC 14-22-21 and 312 IAC 9-10-5.

(i) An individual must not possess, ship, carry, or transport more than two (2) times the daily bag limit of a game bird listed under this section after the beginning of the second day of the season established to take that bird in this rule.

(j) An individual may take, possess, and sell a species of quail, pheasant or partridge that is not:

(1) an endangered species, or
(2) a species listed in subsection (a)
at any time without a license from the department.
(Natural Resources Commission; 312 IAC 9-3-7.5)

Migratory Birds and Waterfowl

The DNR is requesting to further clarify that the age for a youth hunter during the youth waterfowl season is only for those under the age of 16 in order to be in compliance with federal law in 50 CFR 20.105. With the change to age 18 for the free youth hunting days, there may be confusion about the age of youth hunters who participate in the youth waterfowl hunting season. Therefore, the DNR is proposing to provide the following changes for additional clarification:

Proposed language would read as follows:

312 IAC 9-4-2 General Requirements for Migratory birds and waterfowl

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

~~(d)~~ (e) ~~As used in this rule~~ For purposes of youth free hunting days under IC 14-22-11-18, a youth hunter means an individual who is less than sixteen ~~(16)~~ eighteen (18) years of age on the date of the hunt. For purposes of the youth waterfowl season as established in 50 CFR 20.105, the age of a youth hunter is determined under 50 CFR 20.105.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #09-479(F)

DIGEST

Adds 312 IAC 9-1-5.5 to define "disability". Amends 312 IAC 9-1-6 to clarify that exempted wild animals can be possessed or taken at any time. Adds 312 IAC 9-1-7.5 to define "game bird". Amends 312 IAC 9-1-9 to clarify the definition of "hunter orange". Amends 312 IAC 9-1-9.5 to modify the definition of "ice fishing shelter". Adds 312 IAC 9-1-16 to define "waterfowl". Amends 312 IAC 9-2-2 concerning a prohibition against motor driven conveyances. Amends 312 IAC 9-2-3 concerning the application of the article to wild animal parts. Amends 312 IAC 9-2-4 and 312 IAC 9-2-5 to clarify when a trap or net can be set for a wild animal. Amends 312 IAC 9-2-6 to clarify when a wild animal can be taken at fish hatcheries. Amends 312 IAC 9-2-8 to establish a tagging requirement for a wild animal that is not maintained in the possession of the individual who took the animal. Amends 312 IAC 9-2-9 concerning chasing and the use of dogs. Amends 312 IAC 9-2-10 concerning violations of law or license terms and revocations. Amends 312 IAC 9-2-11 to clarify requirements for fishing in state parks and historic sites. Amends 312 IAC 9-2-13 to modify the ability to administer drugs to wild animals held in captivity. Amends 312 IAC 9-3-11 concerning beavers. Amends 312 IAC 9-3-12 concerning foxes, coyotes, and skunks. Amends 312 IAC 9-3-13 concerning minks, muskrats, and long-tailed weasels. Amends 312 IAC 9-3-14 concerning opossums and raccoons. Amends 312 IAC 9-3-14.5 to clarify the requirements for possession and sale of furbearing mammals. Amends 312 IAC 9-3-15 concerning taking beavers, minks, muskrats, long-tailed weasels, red foxes, gray foxes, opossums, skunks, raccoons, or squirrels to protect property. Amends 312 IAC 9-3-16 and 312 IAC 9-3-17 to establish tagging requirements for squirrels and rabbits that are gifted to another person and to clarify the possession requirements for squirrels and eastern cottontail rabbits. Amends 312 IAC 9-3-18.1 concerning bobcats. Amends 312 IAC 9-3-18.2 concerning river otters. Amends 312 IAC 9-3-18.3 concerning badgers. Amends 312 IAC 9-4-2 to clarify and combine rules pertaining to migratory birds, including hunting blinds and nontoxic shot, and changes the age in which a youth hunter can participate in the youth free hunting days. Amends 312 IAC 9-4-5 concerning geese. Adds 312 IAC 9-4-7.1 concerning American crows. Adds 312 IAC 9-4-7.2 to govern the taking of certain species of migratory birds. Adds 312 IAC 9-4-7.5 to establish general requirements for nonmigratory game birds. Amends 312 IAC 9-4-8 concerning pheasants. Amends 312 IAC 9-4-9 concerning quail. Amends 312 IAC 9-4-10 concerning ruffed grouse. Amends 312 IAC 9-4-11 to modify the age in which youth can participate in the special youth turkey season. Amends 312 IAC 9-4-15 to clarify common and scientific names for the English (house) sparrow, European starling, and feral (rock) pigeon. Repeals 312 IAC 9-1-4, 312 IAC 9-1-8, 312 IAC 9-1-11.5, 312 IAC 9-1-13, 312 IAC 9-1-14, 312 IAC 9-1-15, 312 IAC 9-4-3, 312 IAC 9-4-4, 312 IAC 9-4-6, 312 IAC 9-4-12, and 312 IAC 9-4-13. Effective 30 days after filing with the Publisher.

312 IAC 9-1-4; 312 IAC 9-1-5.5; 312 IAC 9-1-6; 312 IAC 9-1-7.5; 312 IAC 9-1-8; 312 IAC 9-1-9; 312 IAC 9-1-9.5; 312 IAC 9-1-11.5; 312 IAC 9-1-13; 312 IAC 9-1-14; 312 IAC 9-1-15; 312 IAC 9-1-16; 312 IAC 9-2-2; 312 IAC 9-2-3; 312 IAC 9-2-4; 312 IAC 9-2-5; 312 IAC 9-2-6; 312 IAC 9-2-8; 312 IAC 9-2-9; 312 IAC 9-2-10; 312 IAC 9-2-11; 312 IAC 9-2-13; 312 IAC 9-3-11; 312 IAC 9-3-12; 312 IAC 9-3-13; 312 IAC 9-3-14; 312 IAC 9-3-14.5; 312 IAC 9-3-15; 312 IAC 9-3-16; 312 IAC 9-3-17; 312 IAC 9-3-18.1; 312 IAC 9-3-18.2; 312 IAC 9-3-18.3; 312 IAC 9-4-2; 312 IAC 9-4-3; 312 IAC 9-4-4; 312 IAC 9-4-5; 312 IAC 9-4-6; 312 IAC 9-4-7.1; 312 IAC 9-4-7.2; 312 IAC 9-4-7.5; 312 IAC 9-4-8; 312 IAC 9-4-9; 312 IAC 9-4-10; 312 IAC 9-4-11; 312 IAC 9-4-12; 312 IAC 9-4-13; 312 IAC 9-4-15

SECTION 1. 312 IAC 9-1-5.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-1-5.5 "Disability" defined

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 5.5. "Disability" means a physical impairment to an individual resulting from an injury or disease, but excludes an impairment that is attributable to the normal aging process.

(Natural Resources Commission; 312 IAC 9-1-5.5; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 2. 312 IAC 9-1-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-1-6 "Exempted wild animal" defined

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 6. "Exempted wild animal" means a wild animal, which is unprotected and may be taken or possessed at any time.

(Natural Resources Commission; 312 IAC 9-1-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 3. 312 IAC 9-1-7.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-1-7.5 "Game bird" defined

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 7.5. "Game bird" means the following:

- (1) Pheasant.**
- (2) Quail.**
- (3) Grouse.**
- (4) Wild turkey.**
- (5) Mourning dove.**

(Natural Resources Commission; 312 IAC 9-1-7.5; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 4. 312 IAC 9-1-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-1-9 "Hunter orange" defined

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 9. (a) "Hunter orange" means:

- (1) a vest;**
- (2) a coat;**
- (3) a jacket;**
- (4) coveralls;**
- (5) a hat; or**
- (6) a cap;**

of daylight fluorescent orange with the dominant wave length 595-605 nm, a purity of not less than eighty-five percent (85%), and a luminance factor of not less than forty percent (40%), solid hunter orange in color, and worn as an exposed outer garment.

(b) Notwithstanding subsection (a), articles of clothing specified under this section with:

- (1) logos;**

- (2) patches;
- (3) insignia; or
- (4) printing;

that do not substantially hinder the visibility of the hunter orange material are allowed.

(Natural Resources Commission; 312 IAC 9-1-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 5. 312 IAC 9-1-9.5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-1-9.5 "Ice fishing shelter" defined

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 9.5. "Ice fishing shelter" means ~~an~~ **a rigid or collapsible** ice fishing house, shanty, or **other** fully enclosed structure.

(Natural Resources Commission; 312 IAC 9-1-9.5; filed Sep 23, 2004, 3:00 p.m.: 28 IR 536; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 6. 312 IAC 9-1-16 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-1-16 "Waterfowl" defined

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 16. "Waterfowl" means a:

- (1) wild goose;
- (2) brant;
- (3) swan; or
- (4) wild duck.

(Natural Resources Commission; 312 IAC 9-1-16; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 7. 312 IAC 9-2-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-2 Prohibition against motor driven conveyances

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 2. (a) ~~It is unlawful to~~ **An individual must not** take or chase a wild mammal or bird from, by the use of, or with the aid of a motor driven conveyance, except:

- (1) as authorized for ~~a handicapped~~ **an individual with a special hunting permit for a person with a disability** under 312 IAC 9-10-10; and
- (2) as provided in subsection (b).

(b) A motorboat may be used to:

- (1) ~~to~~ check traps ~~which~~ **that** are lawfully set and maintained; or
- (2) ~~to~~ retrieve a dead or crippled waterfowl.

(c) A motorboat may be used to hunt waterfowl if the motorboat is:

- (1) beached;
- (2) resting at anchor;
- (3) tied to a stationary object; or
- (4) otherwise without motion except as provided by:
 - (A) wind;
 - (B) water current; or
 - (C) hand-operated oars or paddles.

(d) ~~It is unlawful to~~ **An individual must not** discharge a firearm or bow and arrows from a motor driven conveyance while the conveyance is in motion.

(Natural Resources Commission; 312 IAC 9-2-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 8. 312 IAC 9-2-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-3 Application of this article to wild animal parts

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 3. (a) Except as provided in subsection (b), a prohibition against the:

- (1) possession;
- (2) sale;
- (3) offer for sale;
- (4) purchase;
- (5) offer for purchase;
- (6) shipment;
- (7) transportation;
- (8) delivery; or
- (9) receipt;

of a wild animal also applies to any part or portion of that wild animal.

(b) The prohibition established under subsection (a) does not apply to the **following parts of wild animals taken lawfully:**

- (1) Tanned hides.
- ~~(2) furs; or~~
- (2) Any portion of a furbearer.**
- (3) Cured feathers.

~~of wild animals taken lawfully.~~

~~(c) Any portion of legally taken:~~

- ~~(1) furbearers;~~
- ~~(2) (4) Squirrel tails.~~
- ~~(3) (5) Untanned deer hides.~~
- ~~(4) (6) Antlers. and~~
- ~~(5) (7) Hooves.~~

~~may be sold.~~

(Natural Resources Commission; 312 IAC 9-2-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; filed May 28, 1998, 5:14 p.m.: 21 IR 3712; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 9. 312 IAC 9-2-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-4 Restrictions on the placement of traps

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 4. ~~It is unlawful to~~ **An individual must not** set or place a stake, a chain, a drag, or another portion of a trap ~~which that~~ is designed to take a wild animal except:

- (1) during a season established for trapping that wild animal;
- (2) for coyotes, during any time of year by a person who possesses that land or has written permission from the person who possesses that land;
- (3) for mammals that are damaging property and taken by a resident landowner or tenant under 312 IAC 9-3-15;
- (4) with a falconry license under 312 IAC 9-10-13;
- (5) with a scientific purposes license under 312 IAC 9-10-6; or
- (6) with a nuisance wild animal control permit in accordance with 312 IAC 9-10-11.

(Natural Resources Commission; 312 IAC 9-2-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 10. 312 IAC 9-2-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-5 Netting and trapping wild birds prohibited

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 5. (a) ~~It is unlawful to~~ **An individual must not** possess in the field a net or trap for the purpose of netting or trapping a wild bird protected by law. ~~under 312 IAC 9-4~~ **except with a:**

- (1) scientific purposes license issued by the department under 312 IAC 9-10-6; or
- (2) falconry license issued by the department under 312 IAC 9-10-13.

(b) ~~It is unlawful to~~ **A person must not** place or cause to be placed a trap (set or unset) capable of taking a migratory bird on a pole or post, ~~except where~~ **unless the person possesses** both of the following: ~~are obtained:~~

(1) A permit issued by the U.S. Fish and Wildlife Service under ~~50 CFR~~, **50 CFR 21**, Subpart D. ~~21.42 (October 1, 1995, edition).~~

(2) A ~~permit~~ **scientific purposes license** issued by the department under 312 IAC 9-10-6.

(Natural Resources Commission; 312 IAC 9-2-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 11. 312 IAC 9-2-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-6 Prohibitions applicable at fish hatcheries

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 6. (a) ~~It is unlawful to~~ **An individual must not** take a wild animal in a fish hatchery or fish rearing unit owned, controlled, or supervised by the state or the United States **except with a:**

- (1) scientific purposes license issued by the department under 312 IAC 9-10-6; or
- (2) nuisance wild animal control permit issued by the department under 312 IAC 9-10-11.

(b) ~~It is unlawful to~~ **An individual must not** discharge a firearm in or over a fish rearing unit owned, controlled, or supervised by the state or the United States.

(Natural Resources Commission; 312 IAC 9-2-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 12. 312 IAC 9-2-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-8 Possession restrictions where bag limit established

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 8. (a) ~~A person~~ **An individual** must not:

- (1) possess;
- (2) ship;
- (3) carry; or
- (4) transport;

more than two (2) times the daily bag limit of a wild animal after the beginning of the second day of the season established to take that wild animal.

(b) ~~A person~~ **An individual** must not take more than the daily bag limit of a wild animal in a calendar day.

(c) ~~A person~~ **An individual** must maintain possession of any tag a wild animal taken, and for which a bag limit is established, while the person is either:

- (1) hunting or fishing; or
- (2) returning, after hunting or fishing, to the person's automobile or other principal means of transportation, with the following information if the individual does not maintain possession of the animal that he or she has taken:

(d) ~~A person~~ must not transport a wild animal for another person, which is in excess of the bag limit for the person providing transportation, unless the wild animal is tagged by either of the following:

- (1) A tag issued by the department and properly completed, if the wild animal is one for which a department tag is required.
- (2) If a department tag is not required, a tag signed by the person taking the animal which includes the following information:
 - (A) (1) The person's individual's name and address.
 - (B) (2) The total number and species of wild animals taken.
 - (C) (3) The date the wild animal was taken.
 - (4) The signature of the individual who took the animal.

(d) Notwithstanding subsection (c), an individual must tag a:

- (1) white-tailed deer in accordance with section 3 of this rule; and
- (2) wild turkey in accordance with 312 IAC 9-4-11.

(Natural Resources Commission; 312 IAC 9-2-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 13. 312 IAC 9-2-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-9 Chasing; use of dogs

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 9. (a) **An individual may use dogs** ~~may be used~~ to chase a wild animal at any time unless prohibited by law.

(b) ~~A restriction or season established with respect to chasing~~ **An individual who uses dogs to chase** wild animals ~~applies to an individual~~ **must comply with the season dates and to restrictions for a dog** owned, possessed, or controlled by the individual.

(Natural Resources Commission; 312 IAC 9-2-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 14. 312 IAC 9-2-10 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-10 Violations of law or license terms; revocations

Authority: IC 14-22-2-6

Affected: IC 4-21.5; IC 14-22-6-1

Sec. 10. (a) The **director may suspend, revoke, or deny a license for** failure by a license holder to comply with the law or a term of the license ~~may result in its revocation by the director~~ under IC 4-21.5.

(b) A violation of a license issued under this article is a violation of this article and IC 14-22-6-1.
(Natural Resources Commission; 312 IAC 9-2-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 15. 312 IAC 9-2-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-11 State parks and state historic sites

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 4-21.5; IC 14-22-6-1

Sec. 11. (a) An individual must not take or chase a wild animal, other than a fish, in a state park or a state historic site.

(b) **Fishing in a state park or state historic site is subject to 312 IAC 9-6, 312 IAC 9-7, and 312 IAC 9-8.**

~~(b)~~ (c) An individual qualified under this subsection may trap any European wall lizard (*Podarcis muralis*) from the Falls of the Ohio State Park and the adjacent federal Falls of the Ohio Wildlife Conservation Area in Clarksville, Indiana. In order to qualify under this subsection, an individual must do each of the following:

- (1) Possess a written authorization from the division of state parks.
- (2) Comply with any terms in the written authorization. These terms shall include a requirement that a European wall lizard can be taken only with approved methods.
- (3) For the federal Falls of the Ohio Wildlife Conservation Area, comply with any other terms in the written authorization that are required by the U.S. Army Corps of Engineers.

(Natural Resources Commission; 312 IAC 9-2-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 19, 2003, 8:14 a.m.: 27 IR 459; filed Apr 1, 2008, 10:28 a.m.: 20080430-IR-312070735FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 16. 312 IAC 9-2-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-13 Administration of chemical to nondomestic animals, to animals held on a game breeder license, to animals held on a wild animal possession permit, or to animals held under a rehabilitation permit

Authority: IC 14-22-2-6

Affected: IC 14-22-20; IC 14-22-23

Sec. 13. (a) A person ~~may~~ **must** not administer any drug, vaccine, steroid, microorganism, **poison**, or other chemical to any:

(1) noncaptive wild bird or mammal; **or**

(2) animal held under a:

(A) game breeder license **under IC 14-22-20 and 312 IAC 9-10-4**;

~~(3) animal held under a~~ (B) wild animal possession permit **under 312 IAC 9-11**; **or**

~~(4) animal held under a~~ (C) rehabilitation permit **under 312 IAC 9-10-9**;

without a permit for such administration issued by the director of the division of fish and wildlife.

(b) Notwithstanding subsection (a), ~~an animal held under the holder of a valid:~~

(1) game breeder license **under IC 14-22-20 and 312 IAC 9-10-4**;

(2) wild animal possession permit ~~or~~ **under 312 IAC 9-11**;

(3) rehabilitation permit **under 312 IAC 9-10-9**;

(4) falconry license **under IC 14-22-23 and 312 IAC 9-10-13**;

(5) scientific purposes license **under 312 IAC 9-10-6**; **or**

(6) special purpose educational permit **under 312 IAC 9-10-9.5**;

~~may be administered~~ **administer** a pharmaceutical product approved by a state or federal agency to a **wild animal lawfully possessed under that permit or license** for the purpose of prevention or treatment of malnutrition, illness, disease, injury, or stress.

(c) **Only the holder of a valid:**

(1) wild animal possession permit **under 312 IAC 9-11**; **or**

(2) scientific purposes license **under 312 IAC 9-10-6**;

~~may alter the normal reproductive functions and the potential for pregnancy do not qualify under this subsection.~~ **of a wild animal possessed under that license.**

~~(e)~~ (d) Notwithstanding subsection (a), a:

(1) licensed veterinarian;

(2) county animal control agent;

(3) municipal animal control agent;

(4) holder of a nuisance wild animal control permit; **or**

(5) holder of a scientific purposes license;

may administer to an animal an immobilizing agent, tranquilizer, or drug for euthanasia.

(Natural Resources Commission; 312 IAC 9-2-13; filed May 28, 1998, 5:14 p.m.: 21 IR 3713; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; filed Nov 15, 2002, 3:42 p.m.: 26 IR 1068; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 17. 312 IAC 9-3-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-11 Beavers

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 11. ~~The season for taking~~ **An individual may take** beavers (*Castor canadensis*) is from 8 a.m. on November 15 until noon on March 15 of the following year.

(Natural Resources Commission; 312 IAC 9-3-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 539; filed Apr 4, 2008, 2:56 p.m.: 20080430-IR-312070659FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 18. 312 IAC 9-3-12 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-12 Foxes, coyotes, and skunks

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 12. (a) ~~The season for hunting:~~ **An individual may hunt:**

- (1) red foxes (*Vulpes vulpes*); and
 - (2) gray foxes (*Urocyon cinereoargenteus*);
- is from noon on October 15 until noon on February 28 of the following year.

(b) ~~The season for trapping:~~ **An individual may trap:**

- (1) red foxes (*Vulpes vulpes*); and
 - (2) gray foxes (*Urocyon cinereoargenteus*);
- is from 8 a.m. on October 15 until noon on January 31 of the following year.

(c) Except as provided in subsection (d), ~~the season for:~~ **an individual may:**

(1) ~~hunting:~~ **hunt:**

- (A) coyotes (*Canis latrans*); and
 - (B) striped skunks (*Mephitis mephitis*);
- is from noon on October 15 until noon on March 15 of the following year; and

(2) ~~trapping:~~ **trap:**

- (A) coyotes (*Canis latrans*); and
 - (B) striped skunks (*Mephitis mephitis*);
- is from 8 a.m. on October 15 until noon on March 15 of the following year.

(d) A person who possesses land, or another person designated in writing by that person, may take coyotes on that land at any time. A live coyote taken under this subsection from March 16 through October 14:

- (1) must be euthanized within twenty-four (24) hours of capture; and
- (2) shall not be:
 - (A) possessed for more than twenty-four (24) hours;
 - (B) sold;
 - (C) traded;
 - (D) bartered; or
 - (E) gifted.

(Natural Resources Commission; 312 IAC 9-3-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 539; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; filed Apr 4, 2008, 2:56 p.m.: 20080430-IR-312070659FRA; filed Jul 31, 2008, 4:06 p.m.: 20080827-IR-312070749FRA; errata filed Oct 30, 2008, 10:56 a.m.: 20081119-IR-312080832ACA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 19. 312 IAC 9-3-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-13 Minks, muskrats, and long-tailed weasels

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 13. ~~The season for taking:~~ **An individual may take:**

- (1) minks (*Mustela vison*);
- (2) muskrats (*Ondatra zibethicus*); and
- (3) long-tailed weasels (*Mustela frenata*);

is from 8 a.m. on November 15 until noon on January 31 of the following year.

(Natural Resources Commission; 312 IAC 9-3-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 540; filed Apr 4, 2008, 2:56 p.m.: 20080430-IR-312070659FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 20. 312 IAC 9-3-14 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-14 Opossums and raccoons

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22; IC 35-47-2

Sec. 14. (a) Except as provided in subsection (b), ~~the seasons applicable to raccoons (*Procyon lotor*) and Virginia opossums (*Didelphis marsupialis*) are as follows:~~ **an individual may do the following:**

- (1) ~~Hunting~~ **Hunt raccoons and Virginia opossums** from noon on November 8 until noon on January 31 of the following year.
- (2) ~~Trapping~~ **Trap raccoons and Virginia opossums** from 8 a.m. on November 15 until noon on January 31 of the following year.
- (3) ~~Chasing~~ **Chase raccoons and Virginia opossums** from noon on February 15 until noon on October 14.

(b) A nonresident may:

- (1) hunt raccoons under subsection (a)(1); and
- (2) trap raccoons under subsection (a)(2);

only to the extent that these raccoon seasons in the state of the nonresident are open to Indiana residents.

(c) ~~A person~~ **An individual** must not do the following:

- (1) Possess a firearm, air rifle, or another device capable of taking a raccoon or Virginia opossum while chasing a raccoon or opossum during the chasing season established under subsection (a)(3).
- (2) Remove, attempt to remove, dislodge, or attempt to dislodge a raccoon or Virginia opossum from:
 - (A) a tree hollow;
 - (B) a hole;
 - (C) a den;
 - (D) a pocket;
 - (E) a cavity;
 - (F) a burrow;
 - (G) a tile; or
 - (H) any other place;

where the raccoon or Virginia opossum has secreted itself for security or protection or in which the raccoon maintains a nest or den.

(d) Notwithstanding subsection (c)(1), ~~a person~~ **an individual** may possess a handgun in accordance with IC 35-47 while chasing raccoons and **Virginia** opossums under this section if the person:

- (1) has a valid unlimited license to carry a handgun:

- (A) issued under IC 35-47-2-3; or
 - (B) recognized under IC 35-47-2-21(b); or

- (2) is not required to possess a license to carry a handgun under IC 35-47-2-2.

(Natural Resources Commission; 312 IAC 9-3-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 540; filed Sep 6, 2007, 12:20 p.m.: 20071003-IR-312070023FRA; filed Apr 4, 2008, 2:56

p.m.: 20080430-IR-312070659FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 21. 312 IAC 9-3-14.5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-14.5 Possession of furbearing mammals

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 14.5. (a) ~~A person~~ **An individual** must not possess the untanned hide or unprocessed carcass of any of the following species that have been lawfully taken for more than twenty (20) days after the close of the hunting or trapping season:

- (1) Red fox (*Vulpes vulpes*).
- (2) Gray fox (*Urocyon cinereoargenteus*).
- (3) Striped skunk (*Mephitis mephitis*).
- (4) Beaver (*Castor canadensis*).
- (5) Mink (*Mustela vison*).
- (6) Muskrat (*Ondatra zibethicus*).
- (7) Long-tailed weasel (*Mustela frenata*).
- (8) Virginia opossum (*Didelphis marsupialis*).
- (9) Raccoon (*Procyon lotor*).

(b) ~~A person~~ **An individual** must not possess a live furbearing mammal listed in subsection (a) outside the hunting or trapping season except as ~~otherwise authorized under this article.~~ **under one (1) of the following:**

- (1) A game breeder license in compliance with IC 14-22-20 and 312 IAC 9-10-4.
- (2) A wild animal possession permit in compliance with 312 IAC 9-11.
- (3) A wild animal rehabilitation permit in compliance with 312 IAC 9-10-9.
- (4) A scientific purposes license in compliance with 312 IAC 9-10-6.
- (5) A nuisance wild animal control permit in compliance with 312 IAC 9-10-11.
- (6) A registered or licensed educational or scientific institution with the United States Department of Agriculture in accordance with 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
- (7) A breeder or dealer license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(c) An individual must not sell a live furbearing mammal listed in subsection (a) except:

- (1) during the hunting and trapping season established in this rule for that animal; or
- (2) with a valid game breeder license in compliance with IC 14-22-20 and 312 IAC 9-10-4.

(d) An individual must not possess the untanned hide of a furbearing mammal listed in subsection (a) except:

- (1) during the hunting and trapping season established in this rule for that animal;
- (2) for not more than twenty (20) days after the close of the hunting or trapping season as established in this rule for that animal;
- (3) with a valid fur buyer's license in compliance with IC 14-22-19 and 312 IAC 9-10-12;
- (4) with a valid taxidermy license in compliance with IC 14-22-21 and 312 IAC 9-10-5; or
- (5) with a valid special purpose salvage permit in compliance with 312 IAC 9-10-13.5.

(Natural Resources Commission; 312 IAC 9-3-14.5; filed Apr 4, 2008, 2:56 p.m.: 20080430-IR-312070659FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 22. 312 IAC 9-3-15 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-15 Taking beavers, minks, muskrats, long-tailed weasels, red foxes, gray foxes, opossums, skunks, raccoons, or squirrels to protect property

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 15. (a) Notwithstanding the requirements of this rule, a resident landowner or a tenant may, without a permit at any time, take:

- (1) a beaver;
- (2) a mink;
- (3) a muskrat;
- (4) a long-tailed weasel;
- (5) a red fox;
- (6) a gray fox;
- (7) an opossum;
- (8) a skunk;
- (9) a raccoon;
- (10) a fox squirrel; or
- (11) a gray squirrel;

that is discovered while damaging property.

(b) ~~A person~~ **An individual** who takes a mammal under subsection (a) must report the taking to ~~the division director or to~~ a conservation officer within seventy-two (72) hours of the taking. ~~The individual must dispose of the mammal must be disposed of~~ in a lawful manner. ~~A person~~ **An individual** must not release a mammal except in the county where the mammal was captured.

(Natural Resources Commission; 312 IAC 9-3-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 540; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 23. 312 IAC 9-3-16 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-16 Cottontail rabbits

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 16. (a) Except as provided in subsection (c), ~~the season for taking and possessing an individual may take eastern cottontail rabbits is (Sylvilagus floridanus) from the first Friday of November after November 3 through February 15 of the following year.~~

(b) ~~The daily bag limit is~~ **An individual may take not more than five (5) eastern cottontail rabbits per day.**

(c) ~~The season for taking and possessing~~ **An individual may take eastern cottontail rabbits is from October 1 through January 31 of the following year within the boundaries of the following:**

(1) The following state fish and wildlife areas managed by the division of fish and wildlife:

- (A) Atterbury.
- (B) Blue Grass.
- (C) Brush Creek.
- (D) Chinook.
- (E) Crosley.
- (F) Fairbanks Landing.
- (G) Glendale.
- (H) Hillenbrand.

- (I) Hovey Lake.
- (J) Jasper-Pulaski.
- (K) Kankakee.
- (L) Kingsbury.
- (M) LaSalle.
- (N) Minnehaha.
- (O) Splinter Ridge.
- (P) Sugar Ridge.
- (Q) Pigeon River.
- (R) Tri-County.
- (S) Wilbur Wright.
- (T) Willow Slough.
- (U) Winamac.

(2) The following lake properties managed by the division of state parks and reservoirs:

- (A) Brookville.
- (B) Hardy.
- (C) J. Edward Roush.
- (D) Mississinewa.
- (E) Monroe.
- (F) Patoka.
- (G) Salamonie.

(d) **An individual must not do** the following: ~~are unlawful:~~

- (1) ~~For a person to~~ Hunt rabbits unless that person wears hunter orange.
- (2) ~~To~~ Remove, dislodge, or attempt to remove or dislodge a rabbit from a hole, den, cavity, or tree hollow with the aid of any of the following:
 - (A) A ferret or other small animal.
 - (B) A mechanical device.
 - (C) A chemical.
 - (D) Smoke.
 - (E) Fire.
 - (F) A fume.

(e) A person must not possess a live eastern cottontail rabbit outside the season established in subsections (a) and (c) except with one (1) of the following:

- (1) A game breeder license under 312 IAC 9-10-4.
- (2) A wild animal possession permit under 312 IAC 9-11.
- (3) A wild animal rehabilitation permit under 312 IAC 9-10-9.
- (4) A scientific purposes license under 312 IAC 9-10-6.
- (5) A nuisance wild animal control permit under 312 IAC 9-10-11.
- (6) An educational or scientific institution registered or licensed with the United States Department of Agriculture in accordance with 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
- (7) A breeder or dealer license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(f) An individual who lawfully takes a rabbit may give to another individual one (1) or more carcasses of a rabbit, with no compensation of any kind. A rabbit that is gifted must have a tag attached that contains the following information:

- (1) The hunter's name and address.
- (2) The total number of rabbits taken.
- (3) The date the rabbit was taken.
- (4) The signature of the hunter who took the rabbit.

(g) A carcass of an eastern cottontail rabbit may be possessed by the following:

- (1) The individual who lawfully took the eastern cottontail rabbit during the seasons established in subsections (a) and (c).

- (2) An individual who received the carcass under subsection (f).
- (3) An individual with a valid taxidermy license under IC 14-22-21 and 312 IAC 9-10-5.
- (4) An individual with a valid scientific purposes license under 312 IAC 9-10-6.
- (5) An individual with a valid nuisance wild animal control permit under 312 IAC 9-10-11.
- (6) An individual with a valid special purpose salvage permit under 312 IAC 9-10-13.5.

(h) A person must not sell a live eastern cottontail rabbit except under a valid game breeder license under IC 14-22-20 and 312 IAC 9-10-4.

(Natural Resources Commission; 312 IAC 9-3-16; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; readopted filed July 28, 2003, 12:00 p.m.: 27 IR 286; filed Jan 8, 2007, 9:11 a.m.: 20070207-IR-312060193FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 24. 312 IAC 9-3-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-17 Squirrels

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22-20; IC 14-22-21

Sec. 17. (a) ~~The season for hunting and possessing~~ **An individual may hunt eastern gray squirrels (*Sciurus carolinensis*) and fox squirrels is (*Sciurus niger*) from August 15 through January 31 of the following year.**

(b) ~~The daily bag limit is~~ **An individual may take not more than five (5) eastern gray squirrels and five (5) fox squirrels per day, in aggregate.**

(c) ~~Unless hunting from a boat, a person must not hunt~~ **An individual hunting squirrels after from the first Friday of November after November 3 through January 31 of the following year unless that person wears must wear hunter orange.**

(d) ~~A person~~ **An individual** must not shoot into or otherwise disturb the leaf nest or den of a squirrel.

(e) ~~A person~~ **An individual** must not hunt or possess ~~take~~ **a southern flying squirrel except as otherwise provided by this article. (*Glaucomys volans*).**

(f) A person must not possess a live squirrel established in subsection (a) except with one (1) of the following:

- (1) A game breeder license under IC 14-22-20 and 312 IAC 9-10-4.
- (2) A wild animal possession permit under 312 IAC 9-11.
- (3) A wild animal rehabilitation permit under 312 IAC 9-10-9.
- (4) A scientific purposes license under 312 IAC 9-10-6.
- (5) A nuisance wild animal control permit under 312 IAC 9-10-11.
- (6) An educational or scientific institution registered or licensed with the United States Department of Agriculture in accordance with 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
- (7) A breeder or dealer license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(g) A person must not possess a live southern flying squirrel except with one (1) of the following:

- (1) A wild animal possession permit under 312 IAC 9-11.
- (2) A wild animal rehabilitation permit under 312 IAC 9-10-9.
- (3) A scientific purposes license under 312 IAC 9-10-6.
- (4) A nuisance wild animal control permit under 312 IAC 9-10-11.
- (5) An educational or scientific institution registered or licensed with the United States Department of Agriculture in accordance with 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(6) A breeder or dealer license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(h) An individual who lawfully takes a squirrel may give to another individual one (1) or more carcasses of a squirrel, with no compensation of any kind. A squirrel that is gifted must have a tag attached that contains the following information:

- (1) The hunter's name and address.
- (2) The total number of squirrels taken.
- (3) The date the squirrel was taken.
- (4) The signature of the hunter who took the squirrel.

(i) A carcass of a squirrel may be possessed by the following:

- (1) The individual who lawfully took the squirrel during the seasons established in subsections (a) and (c).
- (2) An individual who received the carcass under subsection (f).
- (3) An individual with a valid taxidermy license under IC 14-22-21 and 312 IAC 9-10-5.
- (4) An individual with a valid scientific purposes license under 312 IAC 9-10-6.
- (5) An individual with a valid nuisance wild animal control permit under 312 IAC 9-10-11.
- (6) An individual with a valid special purpose salvage permit under 312 IAC 9-10-13.5.

(j) A person must not sell a live squirrel listed in subsection (a) except under a valid game breeder license under IC 14-22-20 and 312 IAC 9-10-4.

(Natural Resources Commission; 312 IAC 9-3-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 540; filed Jan 8, 2007, 9:11 a.m.: 20070207-IR-312060193FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 25. 312 IAC 9-3-18.1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-18.1 Bobcats

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 18.1. (a) A person must not take or possess a bobcat (*Felis rufus*) except as otherwise provided by this article with one (1) of the following:

- (1) A scientific purposes license under 312 IAC 9-10-6.
- (2) A nuisance wild animal control permit under 312 IAC 9-10-11.

(b) An individual must not possess a live bobcat except with one (1) of the following:

- (1) A wild animal possession permit under 312 IAC 9-11.
- (2) A wild animal rehabilitation permit under 312 IAC 9-10-9.
- (3) A scientific purposes license under 312 IAC 9-10-6.
- (4) A nuisance wild animal control permit under 312 IAC 9-10-11.
- (5) A registered or licensed educational or scientific institution with the United States Department of Agriculture in accordance with 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
- (6) A breeder, dealer license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(c) An individual must not sell a live bobcat unless that person has a breeder, dealer, or exhibitor license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(Natural Resources Commission; 312 IAC 9-3-18.1; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 26. 312 IAC 9-3-18.2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-18.2 River otters

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 18.2. (a) A person must not take or possess a river otter (*Lutra canadensis*) except as otherwise provided by this article, with one (1) of the following:

- (1) A scientific purposes license under 312 IAC 9-10-6.
- (2) A nuisance wild animal control permit under 312 IAC 9-10-11.

(b) An individual must not possess a live river otter except with one (1) of the following:

- (1) A wild animal rehabilitation permit under 312 IAC 9-10-9.
- (2) A scientific purposes license under 312 IAC 9-10-6.
- (3) A nuisance wild animal control permit under 312 IAC 9-10-11.
- (4) A registered or licensed educational or scientific institution with the United States Department of Agriculture in accordance with 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
- (5) A breeder, dealer, or exhibitor license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(c) An individual must not sell a live river otter unless that person has a breeder, dealer, or exhibitor license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(Natural Resources Commission; 312 IAC 9-3-18.2; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 27. 312 IAC 9-3-18.3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-18.3 Badgers

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 18.3. (a) A person must not take or possess a badger (*Taxidea taxus*) except as otherwise provided by this article, with one (1) of the following:

- (1) A scientific purposes license under 312 IAC 9-10-6.
- (2) A nuisance wild animal control permit under 312 IAC 9-10-11.

(b) A person must not possess a live badger except with one (1) of the following:

- (1) A wild animal possession permit under 312 IAC 9-11.
- (2) A wild animal rehabilitation permit under 312 IAC 9-10-9.
- (3) A scientific purposes license under 312 IAC 9-10-6.
- (4) A nuisance wild animal control permit under 312 IAC 9-10-11.
- (5) A registered or licensed educational or scientific institution with the United States Department of Agriculture in accordance with 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
- (6) A breeder or dealer license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(c) A person must not sell a live badger unless that person has a breeder or dealer license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

(Natural Resources Commission; 312 IAC 9-3-18.3; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 28. 312 IAC 9-4-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-2 General requirements for migratory birds and waterfowl

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 2. (a) The restrictions in this section rule supplement state statutes and federal laws that protect migratory birds and waterfowl.

(b) The:

- (1) annual seasons;
- (2) bag limits;
- (3) hunting restrictions; and
- (4) shooting hours;

for migratory birds and waterfowl are as determined under 50 CFR 20.

~~(b) A person~~ (c) An individual must not hunt migratory birds and waterfowl, except for mute swans (Cygnus olor), unless the person: individual:

- (1) is registered with; and
- (2) possesses an identification number issued through; the Harvest Information Program.

~~(c) (d)~~ Notwithstanding subsection ~~(b)~~, (c), a resident youth hunter participating in a free hunting day for youth hunters as designated by the director is exempt from:

- (1) registration with; and
- (2) possession of an identification number issued through; the Harvest Information Program.

~~(d) (e) As used in this rule, For purposes of youth free hunting days under IC 14-22-11-18, a youth hunter means an individual who is less than sixteen (16) eighteen (18) years of age on the date of the hunt. For purposes of the youth waterfowl season as established in 50 CFR 20.105, the age of a youth hunter is determined under 50 CFR 20.105.~~

~~(e) A person~~ (f) An individual must not take or possess a ~~Virginia rail~~ migratory bird listed as an endangered species in this rule unless the individual possesses a scientific purposes license under 312 IAC 9-10-6.

(g) An individual must not hunt American woodcock (Scolopax minor) unless that person wears hunter orange.

(h) An individual must not hunt waterfowl while possessing shot, other than steel shot or another nontoxic shot.

(i) An individual must not construct a hunting blind on the waters of this state unless the name and address of the individual who constructs the blind is legibly indicated on the blind.

(j) An individual who constructs a hunting blind must cause the removal of the blind from the waters of this state from April 1 through August 15.

(k) An individual must not:

(1) construct or place a permanent blind; or

(2) leave a portable blind overnight;

on property owned or leased by the department.

(Natural Resources Commission; 312 IAC 9-4-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; filed Jun 29, 2007, 2:30 p.m.: 20070725-IR-312060272FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 29. 312 IAC 9-4-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-5 Geese

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 5. (a) Except as provided under subsection (d), the annual seasons, bag limits, hunting restrictions, and shooting hours for geese are as determined under 50 CFR 20. **An individual may hunt the following species of geese:**

(1) Canada geese (*Branta canadensis*).

(2) Snow geese (*Chen caerulescens*).

(3) Greater white-fronted geese (*Anser albifrons*).

(4) Lesser white-fronted geese (*Anser erythropus*).

(5) Ross's geese (*Chen rossii*).

~~(b) The director may close the season established under subsection (a) upon a determination that the allowable harvest of geese for the year has been reached. A closure under this subsection is effective seventy-two (72) hours after the declaration is made.~~

~~(c) The director may close the Posey County goose season upon a determination the allowable goose harvest for Posey County has been reached. A closure under this subsection is effective seventy-two (72) hours after the notification of closure is made. Notification of the closure will be posted at locations in Posey County.~~

~~(d) It is unlawful for (b) An individual to~~ **must not** possess more than the **following** number of shotgun shells ~~designated in this subsection~~, while hunting geese from designated shooting units or sites within Atterbury, Hovey Lake, Kankakee, Jasper-Pulaski, or Pigeon River Fish and Wildlife Areas:

~~(1) If the daily limit is one (1) Canada goose, the individual may possess~~ **no not** more than four (4) shotgun shells.

~~(2) If the daily limit is two (2) Canada geese, the individual may possess~~ **no not** more than eight (8) shotgun shells.

~~(3) If the daily limit is three (3) Canada geese, the individual may possess~~ **no not** more than ten (10) shotgun shells.

~~(4) If the daily limit is four (4) Canada geese, the individual may possess~~ **no not** more than twelve (12) shotgun shells.

~~(5) If the daily limit is five (5) Canada geese, the individual may possess~~ **no not** more than fourteen (14) shotgun shells.

(Natural Resources Commission; 312 IAC 9-4-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2709; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 30. 312 IAC 9-4-7.1 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-4-7.1 American crows

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 7.1. (a) An individual may hunt American crows (*Corvus brachyrhynchos*) from July 1 through August 15 and from December 13 through March 1 of the following year.

(b) An individual may take an unlimited number of crows.

(Natural Resources Commission; 312 IAC 9-4-7.1; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 31. 312 IAC 9-4-7.2 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-4-7.2 Brown-headed cowbirds, common grackles, red-winged blackbirds, rusty blackbirds, Brewer's blackbirds, and crows

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 7.2. An individual may take:

- (1) brown-headed cowbirds (*Molothrus ater*);
- (2) common grackles (*Quicalus quiscula*);
- (3) red-winged blackbirds (*Agelaius phoeniceus*);
- (4) rusty blackbirds (*Euphagus carolinus*);
- (5) Brewer's blackbirds (*Euphagus cyanocephalus*); and
- (6) American crows (*Corvus brachyrhynchos*);

if the birds are committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife or concentrated in numbers and in a manner that constitutes a health hazard or nuisance as provided under 50 CFR 16.

(Natural Resources Commission; 312 IAC 9-4-7.2; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 32. 312 IAC 9-4-7.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 9-4-7.5 General requirements for nonmigratory game birds

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 7.5. (a) An individual must not possess the carcass or parts of a ring-necked pheasant (*Phasianus colchicus*), northern bobwhite quail (*Colinus virginianus*), ruffed grouse (*Bonasa umbellus*), or wild turkey (*Meleagris gallopavo*) unless that person lawfully took that species:

- (1) during the season established for that species in this rule;
- (2) with a scientific purposes license under 312 IAC 9-10-6; or
- (3) with a special purpose salvage permit under 312 IAC 9-10-13.5.

(b) Notwithstanding subsection (a), an individual who lawfully takes a game bird listed under this section may give to another individual one (1) or more carcasses or parts of these game birds, with no compensation of any kind. A game bird that is gifted must have a tag attached that contains the following information:

- (1) The hunter's name and address.

- (2) The total number and species of birds taken.
- (3) The date the birds were taken.
- (4) The signature of the hunter who took the birds.

(c) A carcass of a game bird listed under this section may be possessed by any of the following:

- (1) The individual who lawfully took the bird during the season established for that bird.
- (2) An individual who received the carcass under subsection (b).
- (3) An individual with a valid taxidermy license under IC 14-22-21 and 312 IAC 9-10-5.
- (4) An individual with a valid scientific purposes license under 312 IAC 9-10-6.
- (5) An individual with a valid nuisance wild animal control permit under 312 IAC 9-10-11.
- (6) An individual with a valid special purpose salvage permit under 312 IAC 9-10-13.5.

(d) A person may possess live northern bobwhite quail or ring-necked pheasants only:

- (1) with a game breeder license under IC 14-22-20 and 312 IAC 9-10-4;
- (2) with a dog training ground permit under 312 IAC 9-10-16 for a period of less than five (5) consecutive days only;
- (3) with a private shooting preserve license under IC 14-22-31;
- (4) with a scientific purposes license under 312 IAC 9-10-6;
- (5) with a wild animal rehabilitation permit under 312 IAC 9-10-9; or
- (6) if purchased from a licensed game breeder and released into the wild within five (5) days of taking possession of the birds.

(e) An individual must not hunt any of the following species unless the individual wears hunter orange:

- (1) Ring-necked pheasants (*Phasianus colchicus*).
- (2) Northern bobwhite quail (*Colinus virginianus*).
- (3) Ruffed grouse (*Bonasa umbellus*).

(f) A person must not sell northern bobwhite quail or ring-necked pheasants, including their eggs, except under a valid game breeder license under IC 14-22-20 and 312 IAC 9-10-4.

(g) A person must not sell ruffed grouse or wild turkeys, including their eggs.

(h) A person must not possess ruffed grouse or wild turkeys, including their eggs, except under one (1) of the following:

- (1) A wild animal rehabilitation permit under 312 IAC 9-10-9.
- (2) A scientific purposes license under 312 IAC 9-10-6.
- (3) A special purpose salvage permit under 312 IAC 9-10-13.5.
- (4) A taxidermy license under IC 14-22-21 and 312 IAC 9-10-5.

(i) An individual must not:

- (1) possess;
- (2) ship;
- (3) carry; or
- (4) transport;

more than two (2) times the daily bag limit of a game bird listed under this section after the beginning of the second day of the season established to take that bird in this rule.

(j) An individual may take, possess, and sell a species of quail, pheasant, or partridge that is not:

- (1) an endangered species; or
- (2) a species listed in subsection (a);

at any time without a license from the department.

(Natural Resources Commission; 312 IAC 9-4-7.5; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 33. 312 IAC 9-4-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-8 Pheasants

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 8. (a) Except as provided in subsection (c), ~~the season for hunting and possessing an individual may hunt ring-necked pheasants is~~ **(Phasianus colchicus)** from the first Friday of November after November 3 and continuing an additional forty-four (44) days.

(b) Except as provided in subsection (d), ~~the daily bag limit is an individual may take two (2) cock pheasants per day.~~

(c) ~~The season for hunting and possessing~~ **An individual may hunt ring-necked pheasants from:**

- (1) Atterbury;
- (2) Crosley;
- (3) Glendale;
- (4) Jasper-Pulaski;
- (5) LaSalle;
- (6) Pigeon River (west of State Road 3);
- (7) Tri-County;
- (8) Willow Slough (north of County Road 100 North); and
- (9) Winamac (south of the abandoned C & O Railroad);

Fish and Wildlife Areas and from Huntington Lake is from the first Friday of November after November 3 through January 15 of the following year.

(d) From the Saturday before Thanksgiving through January 15 of the following year, ~~the daily bag limit is an individual may take two (2) ring-necked pheasants per day~~ of either sex on Atterbury, Crosley, Pigeon River (west of State Road 3), Tri-County, Glendale, Willow Slough (north of County Road 100 North), and Winamac (south of the abandoned C & O Railroad) Fish and Wildlife Areas and from Huntington Lake. During the season established under this subsection, whenever applicable, a hunter must:

- (1) pay designated fees; and ~~must~~
- (2) hunt within assigned units.

~~(e) It is unlawful for a person to hunt pheasants unless that person wears hunter orange.~~

~~(f) (e)~~ The head and head plumage of a **ring-necked** pheasant must remain attached to the carcass while the **ring-necked** pheasant is in transit from the site of taking.

(Natural Resources Commission; 312 IAC 9-4-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2709; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 34. 312 IAC 9-4-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-9 Quail

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 9. (a) ~~The season for hunting and possessing~~ **An individual may hunt northern bobwhite quail is (Colinus virginianus) only** as follows:

- (1) South of State Road 26, from the first Friday of November after November 3 through January 15 of the following year.
- (2) North of State Road 26, from the first Friday of November after November 3 and continuing an additional forty-four (44) days.

- (b) ~~The daily bag limit is:~~ **An individual may take the following number of quail per day:**
(1) five (5) **northern bobwhite** quail north of State Road 26; and
(2) eight (8) **northern bobwhite** quail south of State Road 26.

(c) ~~It is unlawful for a person to hunt quail unless the person wears hunter orange.~~
(Natural Resources Commission; 312 IAC 9-4-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 35. 312 IAC 9-4-10 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-10 Ruffed grouse

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 10. (a) ~~The season for hunting and possessing~~ **An individual may hunt ruffed grouse is (*Bonasa umbellus*) only** from October 1 through December 31.

(b) ~~The daily bag limit is~~ **An individual may take two (2) ruffed grouse per day.**

- (c) ~~A person~~ **An individual** must not hunt ruffed grouse except in the following counties:
- (1) Bartholomew.
 - (2) Brown.
 - (3) Clark.
 - (4) Crawford.
 - (5) Dearborn (south of U.S. 50).
 - (6) Greene (east of U.S. 231).
 - (7) Jackson.
 - (8) Jefferson.
 - (9) Jennings (south of U.S. 50).
 - (10) Johnson.
 - (11) LaGrange (except Pigeon River Fish and Wildlife Area).
 - (12) Lawrence.
 - (13) Martin.
 - (14) Morgan.
 - (15) Monroe.
 - (16) Ohio.
 - (17) Orange.
 - (18) Owen.
 - (19) Putnam (south of U.S. 40).
 - (20) Perry.
 - (21) Ripley (south of U.S. 50).
 - (22) Scott.
 - (23) Steuben (except Pigeon River Fish and Wildlife Area).
 - (24) Switzerland.
 - (25) Washington.

(d) ~~A person must not hunt ruffed grouse unless that person wears hunter orange.~~
(Natural Resources Commission; 312 IAC 9-4-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 36. 312 IAC 9-4-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-11 Wild turkeys

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22; IC 35-47-2

Sec. 11. (a) Except as provided in subsection (c), ~~the spring season for hunting and possessing an individual may hunt wild turkeys (Meleagris gallopavo) in the spring~~
(1) ~~is from the first Wednesday after April 20 and~~
(2) ~~continues continuing~~ for an additional eighteen (18) consecutive days.

(b) ~~The fall season for hunting and possessing~~ **An individual may hunt** wild turkeys ~~with a bow and arrows (Meleagris gallopavo) during the fall as follows:~~
(1) ~~is from October 1 to the end of the fall turkey season with firearms which begins on from the first Wednesday after October 14 and~~ (2) ~~continues continuing~~ for an additional four (4) consecutive days; **and**
(2) **with a bow and arrows from October 1 to the end of the fall turkey season with firearms** except as provided in subsection (c).

(c) The spring and fall seasons for hunting and possessing wild turkeys on Camp Atterbury shall be determined by the director on an annual basis to prevent interference with military training exercises.

(d) ~~The limit for taking and possessing is~~ **An individual may take one (1):**
(1) bearded or male wild turkey during the spring season; and
(2) wild turkey of either sex during the fall season.

(e) ~~A person~~ **An individual** must not do the following:
(1) Hunt wild turkeys except between one-half (1/2) hour before sunrise and sunset.
(2) Take a wild turkey except with the use of one (1) of the following:
(A) A shotgun or muzzleloading shotgun:
(i) not smaller than 20 gauge; and
(ii) not larger than 10 gauge;
loaded only with shot of size 4, 5, 6, 7, or 7 1/2.
(B) A bow and arrows, including crossbows as defined in 312 IAC 9-3-4(g), with the following restrictions:
(i) ~~A person~~ **An individual** must not use a:
(AA) long bow; or
(BB) compound bow;
of less than thirty-five (35) pounds pull.
(ii) Arrows must be equipped with metal or metal-edged (or flint, chert, or obsidian napped) broadheads.
(iii) ~~A person~~ **An individual** must not use a:
(AA) crossbow of less than one hundred twenty-five (125) pounds pull;
(BB) crossbow ~~unless it has~~ **without** a mechanical safety; or
(CC) poisoned or explosive arrow.
(iv) No portion of a bow's riser (handle) or:
(AA) track;
(BB) trough;
(CC) channel;
(DD) arrow rest; or
(EE) other device;
that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.
(v) Before or after lawful shooting hours, ~~a person~~ **an individual** must not possess a:
(AA) long bow;
(BB) compound bow; or
(CC) crossbow;
in the field if the nock of the arrow is placed on the bow string.
(3) Hunt wild turkeys in the fall season except in a county the director designates on an annual basis by temporary rule.

(f) The special youth season for hunting wild turkeys under this subsection is two (2) consecutive days beginning on the Saturday immediately before the start of the spring turkey season **established** in subsection (a). As used in this subsection, "youth" means an individual who is less than ~~sixteen (16)~~ **eighteen (18)** years of age on the date of the hunt. A youth who hunts a wild turkey under this section must be accompanied by an adult who is at least eighteen (18) years of age. An adult accompanying a youth hunter must not possess a firearm, bow and arrow, or crossbow while in the field. The seasonal limit for hunting turkeys under this subsection is one (1) bearded or male wild turkey. A youth hunter who takes a **wild** turkey under this subsection must not take another **wild** turkey during the spring turkey season in the same year.

(g) ~~The~~ **An individual must not** use or possession of: **possess:**

- (1) a dog;
- (2) another domesticated animal;
- (3) a live decoy;
- (4) a recorded call;
- (5) an electronically powered or controlled decoy; or
- (6) bait;

while hunting a wild turkey. ~~is prohibited.~~ An area is considered baited for ten (10) days after the removal of the bait, but an area is not considered to be baited that is attractive to wild turkeys resulting from normal agricultural practices.

(h) ~~A person~~ **An individual** must not possess a handgun while hunting wild turkeys or while accompanying the youth hunter during the season established in subsection (f) unless the ~~person~~ **individual** possesses a handgun in accordance with IC 35-47 and:

- (1) has a valid unlimited license to carry a handgun issued under IC 35-47-2-3;
- (2) has a valid unlimited license to carry a handgun recognized under IC 35-47-2-21(b); or
- (3) is not required to possess a license to carry a handgun under IC 35-47-2-2.

(i) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, ~~a person~~ **an individual** must not hunt:
(1) wild turkeys unless possessing a completed and signed license bearing the ~~person's~~ **individual's** name; or

(2) with a wild turkey license issued to another ~~person~~ **individual**.

(j) ~~A person~~ **An individual** may take a wild turkey during the spring season established under subsection (a) only if:

- (1) issued a license to hunt wild turkeys with:
 - (A) a resident youth consolidated hunting license under IC 14-22-11-10(b);
 - (B) a resident spring turkey license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(20);
 - (C) a nonresident spring turkey license under IC 14-22-12-1(a)(21);
 - (D) a resident youth consolidated hunting license under IC 14-22-12-1(a)(24);
 - (E) a nonresident youth spring turkey license under IC 14-22-12-1(a)(27);**
 - ~~(E)~~ **(F)** a lifetime comprehensive hunting license under IC 14-22-12-7(a)(4);
 - ~~(F)~~ **(G)** a lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5); or
 - ~~(G)~~ **(H)** an apprentice spring turkey hunting license under IC 14-22-12-1.7; or
- (2) hunting ~~with legal equipment~~ under IC 14-22-11-1.

(k) ~~A person~~ **An individual** may take a wild turkey during the fall season established under subsection (b) only if:

- (1) issued a license to hunt wild turkeys with:
 - (A) a resident youth consolidated hunting license under IC 14-22-11-10(b);
 - (B) a resident fall turkey license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(22);
 - (C) a nonresident fall turkey license under IC 14-22-12-1(a)(23);
 - (D) a resident youth consolidated hunting license under IC 14-22-12-1(a)(24);
 - (E) a nonresident youth fall turkey license under IC 14-22-12-1(a)(28);**
 - ~~(E)~~ **(F)** a lifetime comprehensive hunting license under IC 14-22-12-7(a)(4);

- ~~(F)~~ **(G)** a lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5); or
~~(G)~~ **(H)** an apprentice fall turkey hunting license under IC 14-22-12-1.7; or
(2) hunting ~~with legal equipment~~ under IC 14-22-11-1.

(l) **Immediately after taking a wild turkey, an individual must attach a piece of paper must,**
~~immediately after taking a wild turkey:~~

- ~~(1) be attached to a leg of the turkey directly above the spur and~~
~~(2) state stating the following:~~

- ~~(A) (1) The name and address of the person individual who took the wild turkey.~~
~~(B) (2) The license number (if applicable) of the person individual who took the wild turkey.~~
~~(C) (3) The date the wild turkey was taken. and~~
~~(D) (4) The sex of the wild turkey taken.~~

(m) ~~A person~~ **An individual** who takes a **wild turkey** must do the following:

- (1) Cause delivery of the **wild turkey** to an official turkey checking station within forty-eight (48) hours of taking. ~~for registration.~~
(2) **Register the wild turkey** in the name of the **person individual** who took the wild turkey. ~~The person who takes the turkey to the official turkey checking station must give.~~
(3) **Provide** the check station **with** true and accurate information, including the name and license number of the **person individual** who took the **wild turkey** and the date the **wild turkey** was ~~killed.~~ **taken.**
(4) **Receive the permanent seal** after the checking station operator:
(A) records the permanent seal number on the log; and
(B) collects the piece of paper described in subsection (l).
~~the person is provided with that seal.~~
(2) **(5) Immediately and firmly affix the seal to the leg of the wild turkey as follows:**
(A) ~~Directly above the piece of paper described in subsection (l)~~ **On the leg of a wild turkey for a wild turkey taken during the spring season.**
(B) Through a section of skin or flesh to prevent its removal (without cutting the seal or the body part to which it is affixed) for a **wild turkey** taken in the fall season.
The permanent seal must remain affixed until processing of the **wild turkey** begins.

(n) The official **wild turkey** checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

~~(n)~~ **(o)** The feathers and beard of a wild turkey must remain attached while the wild turkey is in transit from the site where taken.

(p) As used in this section, "bait" means to:

- (1) place;**
(2) expose;
(3) deposit;
(4) distribute; or
(5) scatter;

grain, salt, or other feed to lure, attract, or entice a wild turkey to an area where a person may take the wild turkey.

(Natural Resources Commission; 312 IAC 9-4-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1533; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 541; filed May 25, 2005, 10:15 a.m.: 28 IR 2946; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; filed Jan 8, 2007, 9:11 a.m.: 20070207-IR-312060193FRA; filed Sep 6, 2007, 12:20 p.m.: 20071003-IR-312070023FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Apr 3, 2009, 1:48 p.m.: 20090429-IR-312080740FRA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 37. 312 IAC 9-4-15 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-15 Exempted species of birds

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 15. ~~English~~ **An individual may take:**

(1) house sparrows (*Passer domesticus*);

(2) European starlings (*Sturnus vulgaris*); and feral

(3) rock pigeons (*Columba livia*) (not including homing pigeons);

may be taken at any time without a license from the department.

(Natural Resources Commission; 312 IAC 9-4-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA)

SECTION 38. THE FOLLOWING ARE REPEALED: 312 IAC 9-1-4; 312 IAC 9-1-8; 312 IAC 9-1-11.5; 312 IAC 9-1-13; 312 IAC 9-1-14; 312 IAC 9-1-15; 312 IAC 9-4-3; 312 IAC 9-4-4; 312 IAC 9-4-6; 312 IAC 9-4-12; 312 IAC 9-4-13.

LSA Document #09-470(F)

(Administrative Cause Number 09-109D)

Filed with the Publisher: March 12, 2010, 1:25 p.m.

Small Business Regulatory Coordinator

Stephen L. Lucas, Hearing Officer, Division of Hearings, Natural Resources
Commission, Indiana Government Center North, 100 North Senate Avenue, Room N501,
Indianapolis, Indiana 46204-2200, (317) 233-3322, slucas@nrc.in.gov

Document History

LSA Document #09-470(F)

Notice of Intent: 20090617-IR-312090470NIA

Proposed Rule: 20091014-IR-312090470PRA

Hearing Held: November 16, 2009

Approved by Attorney General: February 26, 2010

Approved by Governor: March 10, 2010

Filed with Publisher: March 12, 2010, 1:25 p.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On March 15, 2010, the Small Business Regulatory Coordinator, Stephen L. Lucas, filed the following:

I have received no comments, questions, or complaints from a small business with respect to this rule amendment.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-470(F) at its January 12, 2010 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated November 24, 2009:

...

2. REPORT OF PUBLIC HEARING

The public hearing was convened in Indianapolis as scheduled on November 16, 2009.

No member of the public appeared. No member of the public has otherwise offered comments on the proposed amendments.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-470(F)

DIGEST

Amends 312 IAC 8-2-3, governing the use of firearms, hunting, and trapping on DNR properties, to authorize the use of alternative targets at supervised shooting ranges if the Department of Natural Resources determines the use would not pose a hazard to public safety and to resolve a possible ambiguity, which was occasioned by recent rule modifications to standards for the possession of firearms, regarding the discharge of firearms. Effective January 1, 2011.

312 IAC 8-2-3

SECTION 1. 312 IAC 8-2-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-3 Firearms, hunting, and trapping

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22-11-1; IC 35-47-2

Sec. 3. (a) A person must not possess a firearm or bow and arrows on a DNR property unless one (1) of the following conditions apply:

(1) The firearm or bow and arrows are:

(A) unloaded and uncocked; and

(B) placed in a case or locked within a vehicle.

(2) The firearm or bow and arrows are possessed at, and of a type designated for usage on:

(A) a rifle;

(B) a pistol;

(C) a shotgun; or

(D) an archery;

range.

(3) The firearm or bow and arrows are being used in the lawful pursuit of either of the following:

(A) A wild animal on a DNR property authorized for that purpose.

(B) A groundhog as authorized under a license.

(4) The person possesses a handgun on a DNR property other than a reservoir owned by the U.S. Army Corps of Engineers or Falls of the Ohio State Park:

(A) with a valid unlimited license to carry a handgun:

(i) issued under IC 35-47-2-3; or

(ii) recognized under IC 35-47-2-21(b); or

(B) pursuant to an exemption to handgun licensure requirements as authorized under IC 35-47-2-2.

(b) Except as provided in subsection (a)(1) or (a)(4), a firearm or bow and arrows may not be possessed on DNR properties within any of the following:

(1) A nature preserve unless hunting is authorized under subsection ~~(e)~~. (d).

(2) A property administered by the division of state museums and historic sites.

(3) A campground.

(4) A picnic area.

(5) A beach.

(6) A service area.

(7) A headquarters building.

(8) A hunter check station.

(9) A developed recreation site.

(c) A person must not discharge a firearm or bow and arrows on a DNR property except as follows:

- (1) As authorized for a law enforcement officer.
- (2) In the lawful defense of persons or property.
- (3) Under a department permit that authorizes the discharge.
- (4) As authorized at a shooting range.
- (5) In the lawful pursuit of wild animals. The exception provided in this subdivision does not apply within two hundred (200) feet of any of the following:
 - (A) A campsite.
 - (B) A boat dock.
 - (C) A launching ramp.
 - (D) A picnic area.
 - (E) A bridge.

(e) (d) A person may hunt on the following DNR properties:

- (1) A state forest administered by the division of forestry, including a portion of a state forest that is a nature preserve.
- (2) A reservoir property administered by the division of state parks and reservoirs.
- (3) A wildlife area administered by the division of fish and wildlife, including a portion of a wildlife area that is a nature preserve.
- (4) A nature preserve not otherwise approved for hunting under this subsection if approved in a written authorization by the director of the division of nature preserves.

(d) (e) A person hunting on any of the areas described in subsection (e) (d) must do the following:

- (1) Comply with all federal and state:
 - (A) hunting;
 - (B) trapping; and
 - (C) firearms;laws.
- (2) On a fish and wildlife area and a reservoir property, obtain a one (1) day hunting permit and record from a checking station. The person must:
 - (A) retain the permit and record card while in the field for the authorized date; and
 - (B) as directed, return them to the department.
- (3) Refrain from hunting on a nature preserve if prohibited by signage posted at the site.

(e) (f) Unless otherwise posted or designated on a property map, a person must not place a trap except as authorized by a license issued for a property by an authorized representative. This license is in addition to the licensing requirement for traps set forth in IC 14-22-11-1.

(f) (g) A person must not run dogs, except:

- (1) during the lawful pursuit of wild animals; or
- (2) as authorized by a license for field trials or in a designated training area.

A property administered by the division of fish and wildlife may be designated for training purposes without requiring a field trial permit. Only dogs may be used during field trials on a DNR property, except where authorized by a license on a fish and wildlife property.

~~(g) Unless otherwise designated, a person must not discharge a firearm or bow and arrows within two hundred (200) feet of any of the following:~~

- ~~(1) A campsite.~~
- ~~(2) A boat dock.~~
- ~~(3) A launching ramp.~~
- ~~(4) A picnic area.~~
- ~~(5) A bridge.~~

(h) A person must not leave a portable tree blind or duck blind unattended except for the period authorized by 312 IAC 9-3-2(l).

- (i) The following terms apply to the use of shooting ranges:
- (1) A person must not use a shooting range unless the person is:
- (A) at least eighteen (18) years of age; or
- (B) accompanied by a person who is at least eighteen (18) years of age.
- (2) A person must:
- (A) register with the department; and
- (B) pay any applicable fees;
- before using a shooting range.
- (3) **Except as otherwise provided in this subdivision, a person must shoot only at paper targets placed on target holders provided by the department. ~~All firing~~ An authorized representative may approve the use of alternative targets on a supervised shooting range if the department determines a hazard to public safety would not result.**
- (4) **A person must be fire downrange with and take reasonable care taken to assure any projectile is stopped by the range backstop.**
- ~~(4)~~ (5) Shot not larger than size 6 must be used on a shotgun range.
- ~~(5)~~ (6) A person must not:
- (A) discharge a firearm using automatic fire;
- (B) use tracer, armor-piercing, or incendiary rounds;
- (C) play on, climb on, walk on, or shoot into or from the side berms; or
- (D) shoot at clay pigeons, except on a site designated for shooting clay pigeons.
- Glass and other forms of breakable targets must not be used on a shooting range.
- ~~(6)~~ (7) A person must dispose of the targets used by the person under section 2(a) of this rule.
- ~~(7)~~ (8) Permission must be obtained from the department in advance for a shooting event that involves any of the following:
- (A) An entry fee.
- (B) Competition for any of the following:
- (i) Cash.
- (ii) Awards.
- (iii) Trophies.
- (iv) Citations.
- (v) Prizes.
- (C) The exclusive use of the range or facilities.
- (D) A portion of the event occurring between sunset and sunrise.
- ~~(8)~~ (9) On a field course, signs and markers must be staked. Trees must not be marked or damaged.

(j) A person must not take a reptile or amphibian unless the person is issued a scientific collector license under 312 IAC 9-10-6. Exempted from this subsection are:

- (1) turtles taken under 312 IAC 9-5-2; and
- (2) frogs taken under 312 IAC 9-5-3;

from a DNR property where hunting or fishing is authorized. (*Natural Resources Commission; 312 IAC 8-2-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 739, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 553, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3714; filed Sep 19, 2003, 8:14 a.m.: 27 IR 456; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; filed Sep 14, 2005, 2:45 p.m.: 29 IR 461, eff Jan 1, 2006; filed Jul 11, 2006, 9:04 a.m.: 20060802-IR-312060009FRA; filed Sep 6, 2007, 12:20 p.m.: 20071003-IR-312070023FRA; filed Mar 11, 2008, 9:34 a.m.: 20080409-IR-312070449FRA; filed Mar 12, 2010, 1:25 p.m.: 20100407-IR-312090470FRA, eff Jan 1, 2011*)

LSA Document #09-210(F)

(Administrative Cause Number 08-094L)

Filed with the Publisher: December 17, 2009, 1:52 p.m.

Small Business Regulatory Coordinator

Lt. Col. Felix Hensley, Department of Natural Resources, Division of Law Enforcement,
Indiana Government Center South, 402 West Washington Street, Room W255-D,
Indianapolis, IN 46204, (317) 233-3847, fhensley@dnr.in.gov

Document History

LSA Document #09-210(F)

Notice of Intent: 20090408-IR-312090210NIA

Proposed Rule: 20090805-IR-312090210PRA

Hearing Held: October 1, 2009

Approved by Attorney General: December 14, 2009

Approved by Governor: December 17, 2009

Filed with Publisher: December 17, 2009, 1:52 p.m.

Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator:

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On December 22, 2009 the Small Business Regulatory Coordinator, Lt. Col. Felix Hensley, filed the following:

The number of comments, complaints, and questions received by the you from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved.

NONE

The number of complaints or questions reported under subsection (1) that were resolved to the satisfaction of the agency and the small businesses involved.

NONE

Estimated time spent carrying out your duties as SBRC during the most recent state fiscal year, categorized by LSA Document numbers involved.

1 HOUR

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-210(F) at its November 17, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated October 26, 2009:

...

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

A public hearing was held on October 1, 2009 at 1:30 p.m. at the Cannelton Public Library – City Hall, 210 South 8th Street, Suite 2, Cannelton, Indiana. Sandra Jensen, Hearing Officer, Captain David Windsor and Conservation Officer Joe Lackey attended. Nine members of the public appeared to offer comments. The public comments are summarized as follows:

Mark Newton, Cannelton, IN

I'm the one who filed the citizen's petition. I think everyone is going to tell you pretty much the same thing. There is an erosion problem caused by the wake from boats. Then another issue is the safety factor of the boats speeding up and down both Little and Big Deer Creeks. The erosion problem is a major concern. I've owned my place since 2002 and since that time I've lost approximately 2 feet of land and more in some places.

Ken Childers, Cannelton, IN

I would like to thank you for your time on this, it is something that is very important to us. Childers totally agreed with Mark Newton, especially on the safety factor. I have two young kids and we have a floating dock that they can't even sit on and fish because when boats come by the wake is so bad. Childers inquired about the difference between the "no wake" zone that the residents requested and the term "idle speed" that is used within the proposed rule. The hearing officer, with the assistance of Officer Lackey and Captain David Windsor, noted that it is physically impossible for a boat to travel through the water slow enough to produce absolutely no wake. The term "idle speed" is defined as "the slowest possible speed, not to exceed five miles per hour, so as to maintain steerage and produce minimal wake."

Tom Franchville, Cannelton, IN

Inquired with respect to Big Deer Creek, where the point 2,500 feet upstream of the confluence with Little Deer Creek would be located. Officer Lackey explained that the idle zone will "go around the bend" from Franchville's property. His expressed his concern is that if the location is at the "point", I'll end up with more wake than I have right now. Franchville, discussing the matter with Officer Lackey, who is familiar with the area, stated that if you go past my house and make the first bend past my house, then there's a second bend before you get to the "stick-ups". If it goes that far, Franchville believed it would be acceptable, otherwise he believed it will simply cause more erosion on his property. Officer Lackey stated that he did not believe the idle zone would go that far.

The hearing officer referred members of the public to the map attached to Major Hensley's report dated January 14, 2009. Based upon the point depicted on the map, Franchville stated, "I will be the one who opposes this thing." Franchville's concern is that the point between the existing 20 mile per hour limit and the proposed idle zone will be right at his house. He stated that there is "tremendous" erosion and because this will be the area where boaters will "hammer down" and also be the area where boaters will quickly decrease speed, this area will experience an increase in wake and wash action associated with boating.

Franchville stated that there are no reasons why there should be anything other than idle zone up Big or Little Deer Creek. From a safety standpoint, if you fish in your boat and a boat comes around one of the corners at the speeds they travel, if you would be standing up to change seats you would be knocked out of the boat. He expressed that this was made clear at a meeting the residents had with Major Hensley and they believed the entire area, up to the "stick-ups" would be incorporated into the idle zone. He noted that the

"stick-ups" is a self regulated low speed area due to the fact that the water is full of sticks, stumps and other similar debris. The hearing officer noted that while Major Hensley probably understood what they residents wanted, it is not the wishes of the adjoining landowners that controls these decisions. While property owners' property rights as it relates to erosion is a consideration Major Hensley's task is to balance the needs of the owners with the rights and needs of the general public.

Ken Childers, Cannelton, IN

Offered an additional comment expressing his agreement with Franchville's opinion that this rule, as proposed, will be more harmful to the residents than the existing situation. He inquired about whether it was possible to terminate the processing of this rule. The hearing officer explained that the Commission did have the authority to withdraw a rule.

He added, "I feel terrible because we did ask for this and it is so close to exactly what we need to solved all of our problems." However, he stated that based upon where the point is between the 20 mile per hour limit and the idle zone he remains concerned that the wake from boats "hammering down" will continue to prevent his children from safely fishing off his own dock. Childers expressed his opinion that if the new idle zone had added 2,500 feet onto the existing 600 foot idle zone it would probably have been sufficient. (Others in attendance expressed their disagreement that even 3,100 feet of idle zone would be sufficient.)

Beverly Kress, Cannelton, IN

Expressed concern about their residence being put "smack dab in the hammer lane." She stated that she has experienced being knocked down in her boat while it is being docked.

Joseph Kress, Cannelton, IN

Inquired as to whether the map attached to Felix's report is "to scale" for purposes of the written comments and the ability to show where they believe the idle zone limit should be to address safety and erosion concerns. The hearing officer noted that the map was taken off of Google Maps and Dave Windsor noted that Google maps are typically close to scale.

David Galarden, Cannelton, IN

Stated his agreement with the concerns raised by others.

Tom Backer, Cannelton, IN

Stated that he echoed the comments of others in attendance.

After the final public comment had been received, the hearing officer advised those in attendance that she would be aided significantly by having the residents express their opinions about how the length of this proposed idle zone should be revised. She also noted to those in attendance that any revisions to the proposed rule language must be based on a written comment and announced that the public comment period would remain open until Friday, October 9, 2009.

b) Comments Received Outside Public Hearing

Three written comments were received after the public hearing was concluded. These comments have been included as follows:

Tom Franchville, Cannelton, IN

First I would like to thank everyone from the DNR who have given their time and effort to address the concerns of local citizens, landowners, and recreationalist of all types concerning watercraft speed limits on Deer Creek in Perry County. I will address several items in Major Hensley's memorandum to Director Carter dated 1-14-09 as well as the hearing held October 1, 2009 at the Cannelton Library. On July 15, 2008 when Major Hensley met with local residents and landowners he mentions that safety was the number

one concern. While that is true, excessive land erosion was also identified as a major concern of all the landowners as well. He states that the majority of shoreline erosion was on the outside bends of both creeks, which is normal on flowing waters. This is simply not the case, heavy erosion has taken place at my neighbors' home across the bay from me and it is not on any bend. My home sits on the peninsula where Major Hensley is suggesting beginning the 20mph speed zone and it certainly isn't in a bend. If on 8-7-08 Major Hensley would have noticed the color of the water when they arrived and then stayed until Sunday evening when boating traffic subsided they would have seen the clear water on a Friday turn into a mud laden creek in a matter of 2 days. I believe that F/Sgt Schuetter and Officer Lackey can attest to this statement. They have seen many times what heavy weekend boat traffic does to the banks and water. My peninsula is on a straight stretch of the creek and is not on the outside bend as Major Hensley describes. I have spent over \$50,000 trying to protect that bank from erosion from the excessive speeds and wake of watercraft. Major Hensley states that while they were monitoring activity that the wake of boats at 20mph very well could damage docks. Then you must agree that if we are damaging docks at that speed then we certainly are causing erosion. There are building lots being sold farther up the creek and homes are being built with docks. This issue is going to grow even larger with homes and more recreation in that area. If we are only going to address the safety issue then there is also much more to be concerned about than just the folks who have docks. As Major Hensley addresses in his write-up, when they were monitoring activity on the creek, that many boats ran 20mph or much faster. I have sat on my porch and watched two speeding boats nearly collide at the corner just up from my property. When those boats come around corners at that speed any fisherman or other boater is in harms way. I personally have had close calls while fishing or simply idling on the creek and a boat slashes around the corner. There are simply not enough acres of water to allow speeding boats on. I asked at our meeting on July 15, 2008 why the lakes in northern Perry County such as Celina and Indian had trolling motor only limits. The obvious reason is because of bank erosion and safety. Those lakes have similar or more navigable water than Little Deer Creek. I would ask that we take that into consideration when considering limit and treat areas of water with consistency in rules. Surely our banks and property are as valuable to us as those are to the government. As asked in the petition, I once again plead with you, for the safety and erosion problems, that all of Little Deer Creek be made an idle zone. I adamantly oppose, as do my fellow neighbors and landowners, the current proposal of starting the 20mph zone at 2500 ft. from the beginning of Little Deer. I believe this was certainly evident at the hearing in Cannelton on October 1st. This will certainly create more erosion problems even than what we have now and do little for the safety issue. The safety issue on the docks is only one part of the big safety picture. It also should be noted that apparently there was no opposition to the idle zone as no one showed up at the hearing to oppose it. I believe that even those speeding now on the creeks understand the safety and erosion aspect of what the current laws are allowing, hence the no show of opposition. Thank you once again for your time and concern for all the citizens. Sincerely

Joe and Bev Kress, Cannelton, IN

We suggest the idle zone on Little Deer Creek should extend at least thirty five hundred (3500) feet upstream from the State Road 66 bridge for reasons expressed at the local meeting. Thank you for your consideration in this matter.

Mark A. Newton, Cannelton, IN

Attached is my letter regarding the above-referenced petition. Please let me know if you have any questions or need something further.

This is in response to the hearing conducted on October 1, 2009 and the written recommendation of Major Felix Hensley. The hearing was very informative and my personal opinion is that the idle zone proposed on Little Deer Creek is not extended far enough. After looking at the map in Major Hensley's report, not only myself, but all the landowners believe it should be lengthened. Even Conservation Officer Lackey expressed his concerns and thought that the idle zone should be extended past where Hensley recommended. After reading Hensley's report, I agree with Officer Lackey.

I disagree with Major Hensley regarding his view of the erosion issue. He states that he did not see erosion problems that could be attributed directly to boats traveling at greater than idle speed. As quoted by Major Hensley "The area appeared to have erosion typically expected on an Ohio River tributary". In my opinion, Major Hensley is not qualified nor Sgt. Schuetter to say what is natural erosion or erosion from boat wake. What I do know, is when boats come through and they can turn the water

brown two feet out from the shore, that this is not natural erosion. This happens about every fifteen minutes during a tournament. I am very sure that if you and members of the hearing commission and Major Hensley could observe one weekend when there is a large tournament, you all would feel the same.

You have heard our concerns. I know you are under a time restraint, but we have been waiting now for over one (1) year for something to be done. It would be very nice to have idle zone before the next boating season. You stated that someone might object to the idle zone that is proposed and that the landowners don't have all the say. I feel we pay the high property taxes even on the land that the water is on. So who cares if a person fishing gets to their spot 10 seconds early.

The safety of the tournament boaters, recreational boaters, including people in kayaks and canoes, which are becoming more numerous, should be of the utmost concern and the erosion issue as well. In my opinion, there is not a significant amount of erosion from high water, (as Hensley states) as the high water raises and lowers at a slower pace. The wake from boats is what is eroding the banks.

I respectfully request that DNR do the right thing and extend the proposed idle zone for the safety of all boaters and landowners. Thank you and the Hearing Committee, Major Hensley and Officer Lackey for all the time you have spent on this matter. If you have any questions contact me at (812) 719-1227 or at newton2491@sbcbglobal.net.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-210(F)

DIGEST

Amends 312 IAC 5-7-6 to establish a revised idle zone on Deer Creek in Perry County. Effective 30 days after filing with the Publisher.

312 IAC 5-7-6

SECTION 1. 312 IAC 5-7-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-7-6 Deer Creek and its tributaries, Perry County

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8
Affected: IC 14

Sec. 6. (a) A person must not operate a boat on Deer Creek or its tributaries in Perry County in excess of twenty (20) miles per hour.

(b) In addition to the restrictions established under subsection (a), a person must not operate a boat in excess of idle speed:

(1) on Deer Creek:

(A) from its mouth on the Ohio River to buoys placed six two thousand five hundred (600) (2,500) feet upstream from the confluence of Deer Creek with Little Deer Creek, UTM 4197262.1 North (SPC 974300.7 North) and UTM 529318.5 East (SPC 3073012.8 East); or

(B) between buoys placed three hundred (300) feet downstream, UTM 4198026.3 North (SPC 937498.0 North) and UTM 530160.7 East (SPC 297732.7 East), and three hundred (300) feet upstream, UTM 4198200.8 North (SPC 937531.6 North) and UTM 530194.5 East (SPC 297907.3 East), of the State Road 66 bridge in section 5, township 7 south, range 2 west; and

(2) on Little Deer Creek to buoys placed three thousand two hundred (300) (3,200) feet upstream from the confluence of Deer Creek with Little Deer Creek, UTM 4197310.5 North (SPC 974433.4 North) and UTM 528218.8 East (SPC 3069394.3 East).

(Natural Resources Commission; 312 IAC 5-7-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002; readopted filed May 29, 2008, 1:53 p.m.: 20080625-IR-312080057RFA; errata filed Jun 2, 2009, 10:29 a.m.: 20090624-IR-312090386ACA; filed Dec 17, 2009, 1:52 p.m.: 20100113-IR-312090210FRA)

LSA Document #09-199(F)

(Administrative Cause Number 08-064A)

Filed with the Publisher: January 6, 2010, 4:12 p.m.

Small Business Regulatory Coordinator

Ken E. Smith, Assistant Director, Division of Water, Department of Natural Resources,
402 West Washington Street, Room W264, Indianapolis, IN 46204, (317) 232-4224,
kesmith@dnr.in.gov

Document History

LSA Document #09-199(F)

Notice of Intent: 20090401-IR-312090199NIA

Proposed Rule: 20090902-IR-312090199PRA

Hearing Held: October 5, 2009

Approved by Attorney General: December 21, 2009

Approved by Governor: January 5, 2010

Filed with Publisher: January 6, 2010, 4:12 p.m.

Documents Incorporated by Reference: None Received by Publisher

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On February 17, 2010, the Small Business Regulatory Coordinator, Kenneth Smith, filed the following:

The number of comments, complaints, and questions received by the you from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved.

The Flood Control Revolving Fund was created by IC 14-28-5 in the 1950s, and intended to encourage local initiatives to solve local flooding and water resource problems. By statute, this Fund provides only to local units of government low interest loans to help finance relevant local flood control programs. By statute, this loan program can only be obtained by entities falling under the definition of *local unit* as set forth by IC 14-28-5-4. Local unit is defined as county, city, town, or special taxing district created by law such as a conservancy district. Therefore, this loan program is not available to small businesses.

No comments, complaints, and questions were received regarding the rule from small businesses, by the Small Business Regulatory Coordinator (SBRC) for LSA Document #09-199(F).

The number of complaints or questions reported under subsection (1) that were resolved to the satisfaction of the agency and the small businesses involved.

Not applicable, as no rule related complaints or questions were raised with the small business regulatory coordinator.

Estimated time spent carrying out your duties as SBRC during the most recent state fiscal year, categorized by LSA Document numbers involved.

Approximately two hours were spent completing this form.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-199(F) at its November 17, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated October 29, 2009:

...

2. Report of Public Hearing

The public hearing was convened as scheduled on October 5, 2009. No member of the public appeared for the public hearing. No comments have been received throughout the rule amendment process.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-199(F)

DIGEST

Adds 312 IAC 27 to assist with the implementation of the Flood Control Revolving Fund. Effective 30 days after filing with the Publisher.

312 IAC 27

SECTION 1. 312 IAC 27 IS ADDED TO READ AS FOLLOWS:

ARTICLE 27. FLOOD CONTROL REVOLVING FUND

Rule 1. Application and Administration

312 IAC 27-1-1 Application of article

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 1. This article governs an activity that is controlled by IC 14-28-5.
(Natural Resources Commission; 312 IAC 27-1-1; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-1-2 Administration

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-10-2-3; IC 14-28-5

Sec. 2. (a) The department shall administer IC 14-28-5 and this article.

(b) Except as provided in subsection (c) or as otherwise specified, the commission delegates authority to the director or a designate of the director to take any action that is appropriate for the implementation of IC 14-28-5 and this article.

(c) The commission is the ultimate authority for an agency action under IC 14-10-2-3.
(Natural Resources Commission; 312 IAC 27-1-2; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-1-3 Service of applications and documents

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5; IC 23-1-20-15

Sec. 3. (a) This section governs service on the department of any application for a loan or other document required under the flood control program, IC 14-28-5, or this article.

(b) The service of a loan application or other document shall be made upon the division by any of the following:

(1) Personal delivery.

(2) United States mail under any of the following categories:

- (A) First class.
- (B) Certified.
- (C) Express.
- (D) Priority.
- (3) Private carrier.
- (4) Facsimile mail.
- (5) Electronic mail.

(c) An application for a loan or other document is received on the earliest of the following dates:

- (1) The date on which the document is delivered.
- (2) The date of the postmark on the envelope containing the document if the document is sent by a category of United States mail described in subsection (b)(2) and is properly addressed.
- (3) The date on which the document is deposited with a private carrier, as shown by receipt issued by the carrier, if the document is sent by a private carrier and is properly addressed.
- (4) The date of receipt of the document, if the date of deposit or postmark cannot be determined.

(d) As used in this section, "private carrier" means a person, other than the United States Postal Service, that delivers mail as defined in IC 23-1-20-15.

(Natural Resources Commission; 312 IAC 27-1-3; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

Rule 2. Definitions

312 IAC 27-2-1 Applicability

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 1. The definitions contained in:

- (1) IC 14-28-5-1 through IC 14-28-5-4;
- (2) 312 IAC 1; and
- (3) this rule;

apply throughout this article.

(Natural Resources Commission; 312 IAC 27-2-1; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-2-2 "Appurtenant works" defined

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 2. "Appurtenant works" means the features of a dike, levee, or other flood protective work that are reasonably required for the safe and proper operation of a structure financed, in whole or in part, through the fund. The term includes each of the following:

- (1) A spillway system.
- (2) An outlet work.
- (3) A gate or valve.
- (4) A tunnel.
- (5) A conduit.
- (6) An embankment.
- (7) A pump.
- (8) A generator or other electrical supply system.
- (9) A pumping station.
- (10) A closure structure.
- (11) A similar flood protective work.

(Natural Resources Commission; 312 IAC 27-2-2; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-2-3 "Division" defined

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 3. "Division" means the division of water of the department.

(Natural Resources Commission; 312 IAC 27-2-3; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-2-4 "State budget agency" defined

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 4-12-1-3; IC 14-28-5

Sec. 4. "State budget agency" refers to the budget agency created as an agency of the state under IC 4-12-1-3.

(Natural Resources Commission; 312 IAC 27-2-4; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

Rule 3. Execution of the Flood Control Revolving Fund

312 IAC 27-3-1 Consideration of flood control revolving fund

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5-9

Sec. 1. The department may loan money from the fund to a local unit if each of the following conditions are met:

- (1) The state budget agency determines the fund has sufficient available money.**
- (2) The local unit submits a completed application for a loan under IC 14-28-5-9.**
- (3) The local unit adequately documents a plan for and the ability to repay the loan. A local unit that:**
 - (A) is seeking to borrow from the fund; and**
 - (B) has outstanding financial commitments affecting the ability to repay the loan;****shall include copies of the commitments with the application.**
- (4) The local unit provides an ordinance or resolution, enacted by the governing board of the local unit, that authorizes the flood control program.**
- (5) The local unit agrees to do each of the following:**
 - (A) Maintain all papers, accounting records, and other documents pertaining to the flood control program for which the loan was secured.**
 - (B) Make available at all reasonable times to the department, for inspection and copying at the offices of the local unit, the documents described in clause (A).**
 - (C) Allow the department to conduct inspections of facilities used for instituting, accomplishing, or administering an approved flood control works.**
- (6) The flood control program and any appurtenant works conform to the requirements of IC 14-28-5 and this article.**

(Natural Resources Commission; 312 IAC 27-3-1; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-3-2 Flood control program approval

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5-8

Sec. 2. Upon signature by the department director or a designate of the department director approving a loan application under this rule, a flood control program is approved under IC 14-28-5-8(2).

(Natural Resources Commission; 312 IAC 27-3-2; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-3-3 Coordination between the department and the state budget agency

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 3. The department shall coordinate with the state budget agency to maintain a sufficient balance in the fund.

(Natural Resources Commission; 312 IAC 27-3-3; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-3-4 Consideration of priority ratings

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5-11

Sec. 4. (a) The department shall consider and act upon each application for a loan in the order an application is received.

(b) As soon as practicable after an application is received, the department shall inform the applicant whether the application is complete.

(1) If the department determines an application is not complete, the applicant shall be provided at least twenty (20) days to complete the application.

(2) If the application is:

(A) resubmitted within the period provided by the department; and

(B) determined by the department to be complete as resubmitted;

the application shall be considered served on the day originally submitted.

(3) If the application is not:

(A) resubmitted within the period provided by the department; or

(B) deemed to be complete on resubmission;

the application shall be considered denied.

(4) A denial under this subsection does not prohibit an applicant from serving a new application for the same purpose.

(c) If more than one (1) application is received by the division on the same day and a sufficient balance is not present in the fund to cover each application received on this day, the department shall rank and prioritize the applications as provided in IC 14-28-5-11 and this rule as follows:

(1) Addressing an emergency shall be given the first priority.

(2) Repairing an existing facility shall be given secondary priority.

(3) Beginning new construction shall be given third priority.

(4) Proposals to fund planning, engineering, administration, or legal expenses shall be given fourth priority.

(5) Any other purpose shall be given fifth priority.

(d) The local unit seeking a loan for the highest priority shall be given first consideration under this article. If a sufficient balance remains after funding the highest priority, the department may make an additional loan or loans in the descending order of the priority ratings.

(e) Except as provided in this subsection, the department shall not approve a loan to a local unit to satisfy, in whole or in part, a previously existing indebtedness. A loan may be approved to satisfy indebtedness caused by repairs to existing facilities or by construction, during an emergency requiring immediate relief from actual or threatened flood damage, if the emergency occurred within one hundred eighty (180) days preceding the date of the application.

(Natural Resources Commission; 312 IAC 27-3-4; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

312 IAC 27-3-5 Report to the commission

Authority: IC 14-10-2-4; IC 14-28-5-6

Affected: IC 14-28-5

Sec. 5. Not later than July 1 of each calendar year, the division shall provide the commission and the advisory council with an annual report summarizing the activities of the department under this article. The report shall include information concerning the status of the fund.

(Natural Resources Commission; 312 IAC 27-3-5; filed Jan 6, 2010, 4:12 p.m.: 20100203-IR-312090199FRA)

LSA Document #09-152(F)

(Administrative Cause Number 09-001W)

Filed with the Publisher: September 28, 2009, 11:57 a.m.

Small Business Regulatory Coordinator

James Hebenstreit, Department of Natural Resources, Division of Water, Indiana
Government Center South, 402 West Washington Street, Room W264, Indianapolis,
Indiana 46204, (317) 232-4165, jhebenstreit@dnr.in.gov

Document History

LSA Document #09-152(F)

Intent to Readopt Rules: 20090304-IR-312090152RNA

Filed with Publisher: September 28, 2009, 11:57 a.m.

SMALL BUSINESS REGULATORY COORDINATOR RECORD

No report was filed ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-137(F) at its September 22, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated August 28, 2009:

...

C. COMPLIANCE WITH PROCEDURAL REQUIREMENTS REGARDING READOPTION AND RECOMMENDATION FOR FINAL ACTION

A "Notice of Intent to Readopt" was published in the Indiana REGISTER on March 4, 2009 as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 6 without changes. The notice provided that a person had 30 days to submit a written request to the Commission seeking to have a particular section of the rules be readopted separately from the general recodification. If such a request had been received, the Commission would have been required to complete the full rule adoption process for the section. No written request was received. Where no request is received, the Commission may either submit the rules for filing with the publisher under IC 4-22-2-35 or elect the procedure for recodification under IC 4-22-2. For the purposes of the recodification, retention of the current language is found to be appropriate.

The recommendation is for the Commission to approve submittal of the rule for filing with the Publisher.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Readopted Final Rule LSA Document #09-152(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

312 IAC 6

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 6 NAVIGABLE WATERS

LSA Document #09-152(F)

Intent to Readopt Rules: 20090304-IR-312090152RNA

Filed with Publisher: September 28, 2009, 11:57 a.m.

LSA Document #09-137(F)

(Administrative Cause Number 08-009L)

Filed with the Publisher: November 3, 2009, 3:37 p.m.

Small Business Regulatory Coordinator

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Document History

LSA Document #09-137(F)

Notice of Intent: 20090211-IR-312090137NIA

Proposed Rule: 20090722-IR-312090137PRA

Hearing Held: August 24, 2009

Approved by Attorney General: October 19, 2009

Approved by Governor: November 3, 2009

Filed with Publisher: November 3, 2009, 3:37 p.m.

Documents Incorporated by Reference: Information Bulletin #56 (20080116-IR-312080013NRA)

SMALL BUSINESS REGULATORY COORDINATOR RECORD

A report was not filed ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-137(F) at its September 22, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated August 26, 2009:

...

RECOMMENDATION FOR FINAL ADOPTION

The propose rules as published for preliminary adoption appear to be lawful and reasonably structured for their intended purposes. The proposals largely parallel those already in effect, either as permanent rules or temporary rules, for public freshwater lakes. The statutes governing navigable waterways and those governing public freshwater lakes are similar, and the similarity is reflected in treatment of these public waters by the courts. Illustrative are *Parkison v. McCue*, 831 N.E.2d 118 (Ind. App. 2005) and *Bath v. Courts*, 459 N.E.2d 72 (Ind. App. 1984). The procedural requirements for rule adoption have seemingly been satisfied. The proposed rules include important policy decisions, and these are within the province of the Natural Resources Commission. Within this context, the proposed amendments published in the INDIANA REGISTER, and attached as Exhibit "A", are recommended for final adoption.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-137(F)

DIGEST

Amends 312 IAC 6-1-1, 312 IAC 6-4-1, 312 IAC 6-4-2, and 312 IAC 6-4-3 and adds 312 IAC 6-1-4, 312 IAC 6-1-5, 312 IAC 6-2-3.7, 312 IAC 6-4-4, and 312 IAC 6-4-5, governing the placement of structures in navigable waters, to provide new standards pertaining to the placement of piers, to incorporate by reference a nonrule policy document, which assists with the identification of riparian zones, for use as guidance in performing regulatory functions anticipated by IC 14-29-1 (sometimes called the "Navigable Waters Act"), and to provide standards for determining lawful nonconforming uses. Makes technical changes. Effective 30 days after filing with the Publisher.

312 IAC 6-1-1; 312 IAC 6-1-4; 312 IAC 6-1-5; 312 IAC 6-2-3.7; 312 IAC 6-4-1; 312 IAC 6-4-2; 312 IAC 6-4-3; 312 IAC 6-4-4; 312 IAC 6-4-5

SECTION 1. 312 IAC 6-1-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 6-1-1 Application of article

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14-19-1-1; IC 14-21-1; IC 14-28-1; IC 14-29; IC 14-34; IC 14-37

Sec. 1. (a) This article governs an activity relative to a license, and an activity for which a license is required whether or not a permit is sought or held, under:

- (1) IC 14-19-1-1;
- (2) IC 14-29-1;
- (3) IC 14-29-3;
- (4) IC 14-29-4 (if IC 14-29-4-5(2) applies); or
- (5) another statute administered by the department as a result of a waterway being navigable.

(b) In the absence of a contrary state boundary, the line of demarcation for a navigable waterway is the ordinary high watermark. **If the water level on a navigable waterway is modified by a lawful control structure, the line of demarcation for purposes of licensure and enforcement is determined based upon the ordinary high watermark with the control structure in place.**

(c) A separate license is not required under this article and IC 14-29-1 for an activity permitted under:

- (1) IC 14-21-1;
- (2) IC 14-28-1;
- (3) IC 14-29-3;
- (4) IC 14-34; or
- (5) IC 14-37.

(d) Compliance with this article satisfies the licensing requirements for **the following**:

- (1) IC 14-29-1.
- (2) IC 14-29-3. and
- (3) IC 14-29-4 (if IC 14-29-4-5(2) applies).

(e) Before issuing a license under:

- (1) IC 14-21-1;
- (2) IC 14-28-1;
- (3) IC 14-34; or

(4) IC 14-37;

the department shall apply the requirements of IC 14-29-1-8 and this article with respect to an activity within a navigable waterway.

(f) Before issuing a license under this rule, the department shall consider the following:

(1) The public trust. ~~doctrine.~~

(2) The likely impact upon the applicant and other affected persons, including the accretion or erosion of sand or sediments.

(g) A separate license is not required under IC 14-29-1-8 for an activity ~~which~~ **that** is exempted from licensing by IC 14-29-1-8(e).

(Natural Resources Commission; 312 IAC 6-1-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 366; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Sep 28, 2009, 11:57 a.m.: 20091021-IR-312090152RFA; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 2. 312 IAC 6-1-4 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-1-4 Determination of riparian zones

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-1-8

Affected: IC 14-15; IC 14-29-1

Sec. 4. If a determination of riparian boundaries is reasonably required for the performance of functions under IC 14-29-1 and this article, the department (or the commission on administrative review) shall consider as guidance "Riparian Zones within Public Freshwater Lakes and Navigable Waters", as published by the Legislative Services Agency at DIN: 20080116-IR-312080013NRA (January 16, 2008).

(Natural Resources Commission; 312 IAC 6-1-4; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 3. 312 IAC 6-1-5 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-1-5 Lawful nonconforming uses

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-1-8

Affected: IC 4-21.5; IC 14-15; IC 14-29-1-8

Sec. 5. (a) A structure or facility that was lawfully placed before the effective date of a provision of:

(1) IC 14-29-1-8; or

(2) a section of this article;

which would be unlawful if placed after that date, is eligible for qualification under this section as a lawful nonconforming use.

(b) This subsection governs the establishment of a lawful nonconforming use as follows:

(1) A person who claims a lawful nonconforming use has the burden of proof for establishing:

(A) the existence of the use; and

(B) that the use was lawful;

when the new or amended statutory or rule section became effective. Except as provided in subdivision (2), a use must have been in existence when the new or amended section became effective and not merely at some time before it became effective.

(2) If a rule section that governs the placement of a temporary structure becomes effective outside the boating season, but a temporary structure was used during the previous boating season, the use is considered to have been in existence when the section became effective. As used in this subdivision, the boating season is from April 1 through October 31.

(3) The department may consider the following documentation in determining the existence of a lawful nonconforming use:

(A) Ground level or aerial photographs.

(B) Blueprints or engineering drawings.

(C) Pier installation company records.

(D) Inventories of piers that are nonconforming uses. These inventories shall be maintained by the department's division of law enforcement at the district headquarters for the district in which the structure is located.

(E) CAD drawings.

(F) Deeds, plats, and similar recorded documents.

(G) Adjudications by the commission or by a court, including those determining the intent or consequence of an easement.

(H) GPS units or range finders.

(I) USDA documentation.

(J) County GIS programs and documentation.

(K) Statements from riparian owners and others familiar with the site may also be considered, but a determination may not be based solely on those statements.

(4) A person may deliver a written request and supporting documentation in support of a claim to any lawful nonconforming use that arises under IC 14-29-1-8 or this article. A person who does not deliver a request under this subdivision is not prohibited from asserting the benefits of a lawful nonconforming use as an affirmative defense or otherwise in a proceeding under IC 4-21.5.

(5) The department shall provide notice under IC 4-21.5-3-5 of a determination that a structure qualifies or does not qualify as a lawful nonconforming use under subdivision (4).

(6) The department shall maintain a public file or files to memorialize any determinations under this subsection. The department may include in the file a determination that a structure qualified or did not qualify as a lawful nonconforming use even if the determination was made before the effective date of this subsection.

(c) This subsection governs the maintenance of or modification to a lawful nonconforming use as follows:

(1) Except as provided in subdivision (2), a lawful nonconforming use may be maintained, but the use cannot be modified or repaired unless a person satisfies the requirements of IC 14-29-1 and this article that are in effect at the time of the modification or repair. In performing modification or repair under this subdivision, the:

(A) location;

(B) size; and

(C) configuration;

of the use must be maintained.

(2) The department may authorize a modification or repair to a lawful nonconforming use if it determines that the resulting change to the:

(A) location;

(B) size; or

(C) configuration;

would better serve a public right or a vested right, as protected by IC 14-29-1 or this article, than does the existing lawful nonconforming use.

(d) This subsection governs the removal of a lawful nonconforming use as follows:

(1) The director or the director's designee may order the removal of a lawful nonconforming use if the structure or facility is either of the following:

(A) A nuisance that is likely to pose a significant adverse effect to any of the following:

(i) Navigability.

(ii) The environment.

(iii) The enjoyment of life or property.

(iv) The public trust.

(B) Abandoned.

(C) Modified in a manner for which a license is required under IC 14-29-1 or this article, but for which no license has been obtained.

(2) The department has the burden of proof to establish a lawful nonconforming use should be removed under this subsection.

(3) A structure adversely affects navigability under subdivision (1)(A)(i) if the structure is any of the following:

(A) Extended or located more than one hundred (100) feet from the ordinary high watermark of the waterway.

(B) Submerged or otherwise obscured from the view of a boater or other person using a lake.

(C) In a derelict condition. A structure is in a derelict condition if:

(i) so neglected by the owner that it has become ineffective for the intended purposes; or

(ii) following a reasonable inquiry, the owner of the structure cannot be identified.

(4) Generally, a use is abandoned if not exercised for a period in excess of one (1) year. A person may, however, present evidence of special factors that would reasonably excuse a failure to maintain the use. These factors include the following:

(A) Pending litigation relating to the lawful nonconforming use.

(B) Unusual environmental conditions.

(e) IC 4-21.5-3-8 controls an order issued under subsection (d) unless an emergency exists, in which event IC 4-21.5-4 applies.

(f) Nothing in this rule affects the department's right to seek injunctive or other relief under IC 14-29-1 or another applicable law.

(Natural Resources Commission; 312 IAC 6-1-5; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 4. 312 IAC 6-2-3.7 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-3.7 "Group pier" defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-29-1

Sec. 3.7. "Group pier" means a pier that is subject to IC 14-29-1 and provides docking space for any of the following:

(1) At least five (5) separate property owners.

(2) At least five (5) rental units.

(3) An association.

(4) A condominium, cooperative, or other form of horizontal property.

(5) A subdivision or an addition.

(6) A conservancy district.

(7) A campground.

(8) A mobile home park.

(9) A club that has, as a purpose, the use of public waters for any of the following:

(A) Boating.

(B) Fishing.

(C) Hunting.

(D) Trapping.

(E) Similar activities.

(Natural Resources Commission; 312 IAC 6-2-3.7; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 5. 312 IAC 6-4-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 6-4-1 Applicability

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-29-1

Sec. 1. (a) This rule establishes standards for the placement or maintenance of a **pier, including a marina or a group pier**, along or within the ordinary high watermark of a navigable waterway.

(b) This rule is administered by the division of water and the division of law enforcement of the department.

(Natural Resources Commission; 312 IAC 6-4-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Sep 28, 2009, 11:57 a.m.: 20091021-IR-312090152RFA; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 6. 312 IAC 6-4-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 6-4-2 Individual licensure of marinas

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-29-1-8

Sec. 2. (a) Except as provided in subsection (c), a person must not place a marina that is a permanent structure along or within the ordinary high watermark of a navigable waterway unless a written license is required obtained from the department to place a new by which the person agrees to operate the marina along a navigable waterway. under section 3 of this rule.

(b) A license issued under subsection (a) satisfies IC 14-29-1-8 and IC 14-15-7-3.

(c) A separate license is not required under this section if:

- (1) a license is issued for a group pier under section 4 of this rule; and
- (2) the person who seeks the license for the group pier agrees to satisfy the requirements for pumpout facilities in section 3 of this rule.

(Natural Resources Commission; 312 IAC 6-4-2; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Sep 28, 2009, 11:57 a.m.: 20091021-IR-312090152RFA; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 7. 312 IAC 6-4-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 6-4-3 Sewage pumpout facilities for boats at a marina

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-29-1-8

Sec. 3. (a) Except as provided in subsection (c), a person must not operate a marina unless the person **does the following:**

(1) Provides a pumpout that is:

(A) in good working order; and

(B) readily accessible to patrons of the marina. ~~and~~

(2) Secures and maintains one (1) of the following:

(1) (A) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or sanitary sewer.

(2) (B) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.

(3) (C) An alternative written approval for wastewater disposal from an authorized governmental agency.

(b) The department shall require compliance with subsection (a) as a condition for the issuance of a license under section 2 of this rule.

(c) A person may apply to the division of law enforcement for an exemption from this section. The exemption shall be granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

(1) The marina is designed to serve exclusively boats that are neither required nor likely to be equipped with a marine sanitation device.

(2) The operator of the marina has entered a binding agreement with another marina or similar facility along the waterway to provide pumpout services where the other marina or similar facility:

(A) maintains a lawful pumpout as described in subsection (a);

(B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and

(C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(Natural Resources Commission; 312 IAC 6-4-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3885; errata filed Jun 2, 2009, 10:29 a.m.: 20090624-IR-312090386ACA; readopted filed Sep 28, 2009, 11:57 a.m.: 20091021-IR-312090152RFA; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 8. 312 IAC 6-4-4 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-4-4 Individual licensure of group piers

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-15; IC 14-26-2

Sec. 4. (a) A person must not place a group pier along or within the ordinary high watermark of a navigable waterway unless the person obtains a written license from the department under this section.

(b) The applicant must demonstrate exercise of the license would not do any of the following:

(1) Unreasonably impair the navigability of the waterway.

(2) Cause significant harm to the environment.

(3) Pose an unreasonable hazard to life or property.

(4) Violate the public trust.

(5) Interfere with the reasonable exercise of boating operations by the public.

(6) Interfere with the legal interests of a landowner having property rights abutting the lake or rights to access the lake.

(c) The department shall condition a license for a group pier so the placement, configuration, and maintenance of the pier, as follows:

(1) Provide a reasonable buffer zone between the pier and the following:

(A) The channel where boats are commonly operated in excess of ten (10) miles per hour.

(B) The riparian zone of adjacent property owners to provide for reasonable navigation by the adjacent property owner and by the public. Except as otherwise provided in this clause, the department shall require at least (5) feet of clearance on both sides of a riparian line (for a total of ten (10) feet). The department may require as much as ten (10) feet of clearance on both sides of a riparian line (for a total of twenty (20) feet) if, based upon the opinion of a qualified professional, that additional clearance is required for reasonable navigation. The department may approve an exception to this clause where:

(i) adjacent riparian owners use a common pier along their mutual property line; and

(ii) the purposes of this clause are satisfied by waters elsewhere within their riparian zones.

(2) Do not result in unreasonable traffic congestion either:

(A) in the immediate vicinity of the pier; or

(B) to impair the carrying capacity of the navigable waterway where the department has determined the carrying capacity in an analysis that is published before the license application is filed.

(3) Do not authorize structures that are likely to be hidden or obscured so as to pose a hazard to the public.

(4) Minimize disturbances to vegetation and sediments between the ordinary high watermark and adjacent shallow waters.

(5) Are unlikely to trap debris or redirect sediments or currents to cause erosion or sedimentation that is detrimental to navigation or to the property rights of other riparian owners.

(6) Avoid causing or appearing to cause appropriations of public water unnecessary to the reasonable exercise of riparian rights. A pier must not extend more than one-half (1/2) the width of the applicant's shoreline. As used in this subdivision, "width" is determined by the straight line formed between the points located at intersections of the applicant's property lines with the shoreline.

(Natural Resources Commission; 312 IAC 6-4-4; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

SECTION 9. 312 IAC 6-4-5 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-4-5 General licenses for qualified piers

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-15; IC 14-26-2; IC 14-29-1

Sec. 5. (a) The placement and maintenance of a pier is authorized without a written license issued by the department under IC 14-29-1 and this rule if the pier qualifies under this section.

(b) In order for a pier to qualify, the structure must satisfy each of the following:

(1) Not infringe on the access of an adjacent landowner to the navigable waterway.

(2) Not unduly restrict navigation.

(3) Not exceed the lesser of the following:

(A) One hundred (100) feet long.

(B) One-quarter (1/4) of the width of the waterway.

(4) Not be unusually wide or long relative to similar structures within the vicinity on the same navigable waterway.

(5) Not be a marina.

(6) Not be a group pier.

(7) Be placed by a riparian owner or with the written approval of a riparian owner.

(c) A pier placed along or within the ordinary high watermark of Lake Michigan must also comply with 312 IAC 11-7 or 312 IAC 11-8.

(d) A pier placed along or within the ordinary high watermark of any of the following lakes must, in addition to this article, satisfy any requirement otherwise applicable to a property that is owned or leased by the state and managed by a division of the department:

- (1) Brookville Lake in Franklin County and Union County.
- (2) Eagles Mill Lake in Putnam County and Owen County.
- (3) Cecil M. Harden Lake in Parke County.
- (4) Mississinewa Lake in Miami County, Wabash County, and Grant County.
- (5) Lake Monroe in Monroe County, Brown County, and Lawrence County.
- (6) Patoka Lake in Dubois County, Orange County, and Crawford County.
- (7) J. Edward Roush Lake in Huntington County.

(e) A pier is exempted from licensure under this rule and IC 14-29-1 if placed along or within the ordinary high watermark of either of the following:

- (1) Lake Freeman in Carroll County and White County.
- (2) Lake Shafer in White County.

(Natural Resources Commission; 312 IAC 6-4-5; filed Nov 3, 2009, 3:37 p.m.: 20091202-IR-312090137FRA)

LSA Document #09-85(F)

(Administrative Cause Number 08-207E)

Filed with the Publisher: November 3, 2009, 3:36 p.m.

Small Business Regulatory Coordinator

Megan Abraham, Division of Entomology and Plant Pathology, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W290, Indianapolis, IN 46204, 317-234-5182, mabraham@dnr.in.gov

Document History

LSA Document #09-85(F)

Notice of Intent: 20090211-IR-312090085NIA

Proposed Rule: 20090722-IR-312090085PRA

Hearing Held: August 13, 2009

Approved by Attorney General: October 19, 2009

Approved by Governor: November 3, 2009

Filed with Publisher: November 3, 2009, 3:36 p.m.

Documents Incorporated by Reference: None Received by Publisher

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On November 12, 2009, the Small Business Regulatory Coordinator, Megan Abraham, filed the following:

Have checked with Phil and the rest of the field staff and at this point we have nothing to report. There have been no comments, questions, or complaints from small businesses with respect to the rule. If you need a more official document please let me know.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-85(F) at its September 22, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated August 14, 2009:

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2. Report of Public Hearing

The public hearing was convened as scheduled on August 13, 2009. No member of the public appeared for the public hearing. No comments have been received throughout the rule amendment process.

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TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-85(F)

DIGEST

Amends 312 IAC 18-3-18, pertaining to entomology and plant pathology, to regulate the emerald ash borer (*Agrilus planipennis*), a pest or pathogen, to provide standards for quarantine and to add counties and townships to the quarantine area. Effective 30 days after filing with the Publisher.

312 IAC 18-3-18

SECTION 1. 312 IAC 18-3-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-3-18 Control of the emerald ash borer

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 18. (a) The emerald ash borer (Coleoptera: Buprestidae: *Agrilus planipennis*) is:

- (1) a pest or pathogen; and
- (2) regulated under this section.

(b) The definitions in 312 IAC 1, 312 IAC 18-1, and as follows apply throughout this section:

- (1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture for this purpose, including a phytosanitary document or multiple use quarantine certificate.
- (2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this section and other stated conditions.
- (3) "Eradication area" means the area including all plants infected by the emerald ash borer and any other ash species within one-half (1/2) mile radius of an infected plant.
- (4) "Infested area" means a site where:
 - (A) the emerald ash borer is present; or
 - (B) circumstances make it reasonable to believe that the ash borer is present.
- (5) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this section.
- (6) "Move" means to:
 - (A) ship;
 - (B) offer for shipment;
 - (C) receive for transportation;
 - (D) transport;
 - (E) carry; or
 - (F) allow to move or ship.

(c) The following counties include an infested area and are regulated under this section:

- (1) The following townships in Adams County:
 - (A) Blue Creek Township.
 - (B) French Township.
 - (C) Hartford Township.
 - (D) Jefferson Township.
 - (E) Kirkland Township.

- (F) Monroe Township.
- (G) Preble Township.
- (H) Root Township.
- (I) St. Marys Township.
- (J) Union Township.
- (K) Wabash Township.
- (L) Washington Township.

(2) The following townships in Allen County:

- (A) Aboite Township.
- (B) Adams Township.
- (C) Cedar Creek Township.
- (D) Eel River Township.
- (E) Jackson Township.
- (F) Jefferson Township.
- (G) Lafayette Township.
- (H) Lake Township.
- (I) Madison Township.
- (J) Marion Township.
- (K) Maumee Township.
- (L) Milan Township.
- (M) Monroe Township.
- (N) Perry Township.
- (O) Pleasant Township.
- (P) Scipio Township.
- (Q) Springfield Township.
- (R) St. Joseph Township.
- (S) Washington Township.
- (T) Wayne Township.

(3) Hamblen Township in Brown County.

~~(3)~~ (4) The following townships in Dekalb County:

- (A) Butler Township.
- (B) Concord Township.
- (C) Fairfield Township.
- (D) Franklin Township.
- (E) Grant Township.
- (F) Jackson Township.
- (G) Keyser Township.
- (H) Newville Township.
- (I) Richland Township.
- (J) Smithfield Township.
- (K) Spencer Township.
- (L) Stafford Township.
- (M) Troy Township.
- (N) Union Township.
- (O) Wilmington Township.

(4) (5) Concord Township in Elkhart County.

(6) Georgetown Township in Floyd County.

~~(5)~~ (7) The following townships in Hamilton County:

- (A) Clay Township.
- (B) Delaware Township.

~~(6)~~ (8) The following townships in Huntington County:

- (A) Clear Creek Township.
- (B) Dallas Township.
- (C) Huntington Township.
- (D) Jackson Township.
- (E) Jefferson Township.

- (F) Lancaster Township.
- (G) Polk Township.
- (H) Rock Creek Township.
- (I) Salamonie Township.
- (J) Union Township.
- (K) Warren Township.
- (L) Wayne Township.

(9) Plain Township in Kosciusko County.

~~(7)~~ **(10)** The following townships in LaGrange County:

- (A) Bloomfield Township.
- (B) Clay Township.
- (C) Clearspring Township.
- (D) Eden Township.
- (E) Greenfield Township.
- (F) Johnson Township.
- (G) Lima Township.
- (H) Milford Township.
- (I) Newbury Township.
- (J) Springfield Township.
- (K) Van Buren Township.

~~(8)~~ **(11)** The following townships in Marion County:

- (A) Lawrence Township.
- (B) Washington Township.

(12) Polk Township in Monroe County.

~~(9)~~ **(13)** The following townships in Noble County:

- (A) Albion Township.
- (B) Allen Township.
- (C) Elkhart Township.
- (D) Green Township.
- (E) Jefferson Township.
- (F) Noble Township.
- (G) Orange Township.
- (H) Perry Township.
- (I) Sparta Township.
- (J) Swan Township.
- (K) Washington Township.
- (L) Wayne Township.
- (M) York Township.

~~(10)~~ **(14)** The following townships in Porter County:

(A) Jackson Township.

(B) Portage Township.

(C) Westchester Township. in Porter County

~~(11)~~ **(15)** White River Township in Randolph County.

~~(12)~~ **(16)** The following townships in St. Joseph County:

- (A) Harris Township.
- (B) Portage Township.

~~(13)~~ **(17)** The following townships in Steuben County:

- (A) Clear Lake Township.
- (B) Fremont Township.
- (C) Jackson Township.
- (D) Jamestown Township.
- (E) Millgrove Township.
- (F) Otsego Township.
- (G) Pleasant Township.
- (H) Richland Township.
- (I) Salem Township.

- (J) Scott Township.
- (K) Steuben Township.
- (L) York Township.
- ~~(14)~~ **(18)** The following townships in Wabash County:
 - (A) Chester Township.
 - (B) Lagro Township.
 - (C) Liberty Township.
 - (D) Noble Township.
 - (E) Paw Paw Township.
 - (F) Pleasant Township.
 - (G) Waltz Township.
- ~~(15)~~ **(19)** The following townships in Wells County:
 - (A) Chester Township.
 - (B) Harrison Township.
 - (C) Jackson Township.
 - (D) Jefferson Township.
 - (E) Lancaster Township.
 - (F) Liberty Township.
 - (G) Nottingham Township.
 - (H) Rock Creek Township.
 - (I) Union Township.
- ~~(16)~~ **(20)** The following townships in White County:
 - (A) Honey Creek Township.**
 - ~~(A)~~ **(B)** Liberty Township.
 - ~~(B)~~ **(C)** Union Township.
- ~~(17)~~ **(21)** The following townships in Whitley County:
 - (A) Cleveland Township.
 - (B) Columbia Township.
 - (C) Etna-Troy Township.
 - (D) Jefferson Township.
 - ~~(E)~~ Richland Township.
 - (F) Smith Township.
 - (G) Thorncreek Township.
 - (H) Union Township.
 - (I) Washington Township.

(d) The following items are regulated articles:

- (1) The emerald ash borer in any living stage of development.
- (2) Any ash tree (*Fraxinus* spp.), including nursery stock.
- (3) A limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.
- (4) An ash log, slab, or untreated ash lumber with bark attached.
- (5) Composted and noncomposted ash chips and composted and noncomposted ash bark chips at least one (1) inch in diameter.
- (6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of the spread of the emerald ash borer.
- (7) Cut firewood of any nonconiferous species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

- (1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of the emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.

(2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher if the article is:

(A) shipped in an enclosed vehicle; or

(B) completely enclosed by a covering adequate to prevent access by the emerald ash borer.

(3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.

(4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.

(5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher, if the article is:

(A) shipped in an enclosed vehicle; or

(B) completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.

(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this section must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this section.

(l) Uncomposted ash chips and uncomposted ash bark chips not larger than one (1) inch in diameter are exempted from the requirements of this section.

(m) Any ash species within the eradication area shall be removed and rendered incapable of supporting a life stage of the emerald ash borer.

(n) Regulated articles from another infested state or any part of a state infested with the emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after:

- (1) all ash has been removed; and
- (2) the site is released by the state entomologist or his or her designee.

(p) A person must not move ash, in any form, from the eradication area without a compliance agreement signed by the state entomologist or his or her designee.

(Natural Resources Commission; 312 IAC 18-3-18; filed May 25, 2005, 10:00 a.m.: 28 IR 2942; readopted filed Sep 19, 2008, 10:23 a.m.: 20081008-IR-312080076RFA; filed Oct 1, 2008, 4:08 p.m.: 20081029-IR-312080413FRA; filed Nov 3, 2009, 3:36 p.m.: 20091202-IR-312090085FRA)

LSA Document #09-80(F)

(Administrative Cause Number 08-105W)

Filed with the Publisher: November 3, 2009, 3:35 p.m.

Small Business Regulatory Coordinator

Linnea Petercheff, Staff Specialist, Division of Fish and Wildlife, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-6527, lpetercheff@dnr.in.gov

Document History

LSA Document #09-80(F)

Notice of Intent: 20090211-IR-312090080NIA

Proposed Rule: 20090722-IR-312090080PRA

Hearing Held: August 24, 2009

Approved by Attorney General: October 19, 2009

Approved by Governor: November 3, 2009

Filed with Publisher: November 3, 2009, 3:35 p.m.

Documents Incorporated by Reference: None Received by Publisher

SMALL BUSINESS REGULATORY COORDINATOR RECORD

A report was not filed following ten days after filing with the Publisher.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-80(F) at its September 22, 2009 meeting. Following is an excerpt:

Lucas said Carle Kelle and Mike Phelps, from the prospecting community, attended the public hearing held in Indianapolis. Kelle, Phelps and other prospectors worked with the Commission and the Division of Hearings in a "very gentlemanly fashion. This has been a very positive and cooperative effort in coming up with a proposition that hopefully has legs to stand on and can move forward." Lucas then recommended final adoption of the proposed amendments as presented.

Mike Phelps expressed appreciation for the efforts of the Commission, Advisory Council, and the Department regarding the rule proposal. "I know creating new rules to govern some new activity...would be difficult and time consuming. We've gone a long way and had a lot of views. I think it's been in the interest of the environment, which has been taken well into consideration, as well as the interest of the people involved in the activity." He concluded by expressing his support for the proposed rule amendments.

Carl Kelle said, "I would like to echo what Mike [Phelps] said. Thank you so much for giving us your ear. Thank you for all the time you spent going out into the field." There are "maybe only a few hundred" people that participate in recreational prospecting in Indiana. Kelle said that he, personally, and speaking on behalf of the Southern Indiana Gold Prospectors Association, "completely support" the proposed rule amendments.

Excerpt from Hearing Officer Report dated August 24, 2009:

...

1. [REPORT OF PUBLIC HEARING AND EMAIL COMMENTS]

A. Report of Public Hearing

The public hearing was held in Indianapolis as scheduled on August 24, 2006. Represented from the Department of Natural Resources were Ron McAhrn, Deputy Director for the Bureau of Water and Resource Regulation; Major Steve Hunter from the Division of Law Enforcement; and, Linnea Petercheff from the Division of Fish and Wildlife.

The following comments were received from citizens:

Michael Phelps, a prospector from Brookston, who had previously provided email comments and had assisted in development of the proposed standards, stated:

"I'm just here to voice my support. I think the rule is well crafted" to "take into account" the interests of the state, the needs of the environment, and the recreational enjoyment of prospectors.

Carl Kelle, a prospector and officer in the Indiana Chapter of Gold Prospectors, also participated in development of the rule proposal. He said he did not purport to speak for each member but had shared the draft rule with the Indiana Chapter during a meeting the previous Saturday. No one at the meeting expressed opposition to the concepts, and some expressed support for the draft.

Kelle said he was interested in developing greater specificity as to "where and what endangered species are out there". He asked whether a pamphlet or another guidance could be developed that would augment understanding of the practical applications of the rule. He said otherwise knowing what and where to avoid endangered species could be challenging.

Linnea Petercheff responded that the Division of Fish and Wildlife would help develop a guidance document. The guidance could be placed online as a nonrule policy document, assuming the rule is approved and given final adoption. She said agency financial resources were limited, and the Division of Fish and Wildlife needed to be sensitive to avoiding the creation of a document that could be used by unscrupulous collectors of endangered species. The emphasis would be upon location but potentially with online cross-references to descriptions of species of concern. Petercheff stated she would have at least a preliminary outline, to be shared during the September 22 Commission meeting, of what the Division of Fish and Wildlife could undertake in response to Kell's request.

B. Email Comments

The following comments were received by email:

Jack Corpuz, Pheasants Forever, Indianapolis, Indiana (January 18, 2009)

Support this proposal with one exception: I would still like to see some minimal licensing for amateur prospectors.

Robert D. Henze, Ripley County (January 27, 2009)

Allow recreational gold prospecting in streams and rivers with a sluice box, rocker box, shovel and gold pans.

State that any hazardous materials like lead sinkers, lead bullets, or mercury that are recovered from the environment of the said stream or river must be retained by the prospector for proper disposal at a designated state provided location.

This would provide good wholesome family recreation in our state and also help clean up our environment.

Michael G. Phelps, Brookston, Indiana (February 18, 2009)

I support the rules as posted.

Raymond M. Stanis, Sr., Watseka, Illinois (February 19, 2009)

I prospect and Indiana is the closest place to me. Except for last year spent many hundreds of dollars in local towns there and had a wonderful time. These new rules would allow me to enjoy my hobby and share it with my grand kids. Please approve these rules.

Keith C. Chasteen, Louisville, Kentucky (February 19, 2009)

I commend you on the proposed rules for recreational prospecting in the State of Indiana. The proposed rules will protect the natural resources of the state, as well as continue to provide for the recreational activity of prospecting. This activity has positive impacts on Indiana's recreation revenues and should continue to be available as you have outlined in your proposal.

Charles R. Lassiter (MidwestProspector.com), Logansport, Indiana (February 19, 2009)

I am very glad that recreational prospecting has finally been given the same consideration as other outdoor activities. I think that the new rules are fair and reasonable and will allow this family oriented hobby to continue in an environmentally friendly manor. I would like to thank all of the members of the NRC and DNR whom have worked so diligently to allow our hobby to continue unabated. With these new rules in place, a whole new generation of young people will be able to learn about the geology and natural wonder of our great state, and maybe find a little gold in the process. Thanks!

Billy B. Webb, Jr. (Ohio Buckeye Chapter of the G.P.A.A.), Willard, Ohio, (February 20, 2009)

Thank you very much for allowing dredging and prospecting.

Laurence Drown (Indiana Recreational Gold Prospectors), Marshall County, Kentucky (February 21, 2009)

I'm very pleased that this amendment has been tendered. In the past I have spent thousands of dollars prospecting in Indiana. Now that recreational dredging is being allowed, I am considering buying a seasonal home in Indiana. I can assure you that your decision is a good one, because small-scale dredging provides a positive benefit for both the fauna and habitat of streams and rivers.

Wayne A. Mercer (President, Central Indiana Gold Prospectors Association of America), Johnson County, Indiana (February 21, 2009)

Thank you for your work on this area. Recreational Prospecting has needed to be addressed for some time. The new rules are fair while allowing the activity to be regulated it protects the environment and endangered species. I want to thank the N.R.C. for their due diligence on this issue. Their extra effort {including their attendance of a field "recreational prospecting" demonstration} and investigation of the issue has provided a balanced set of rules everyone can live with. Thank You. May you all find a little "color" in your Pan!

Nathan Yoke (IRGPA), Shirley, Indiana (February 22, 2009)

Well I would like say thanks and about time Indiana got with it on the prospecting as most of us all know its the oldest job out their and started the USA now Indiana can get on board like NC and other states.

James Simons (New York State Prospectors), Branchport, New York (February 22, 2009)

This would be a win-win situation for the state of Indiana and for the Recreational Prospector. Also the revenue the state would gain from this. Also the streams would be cleaned of trash without the expense of the state.

Joshua Townsend, Elmira, New York (February 22, 2009)

I would just like to voice my support of the law changes.

Richard O. Cordes (Ohio State Prospectors Association member), Napoleon, Ohio, (February 23, 2009)

I think that allowing the recreational prospector to work in your waterways is a very good idea. The removal of some of the lead and other toxic metals helps clean up the environment and protects the wildlife and fish. I have seen how much the fish in the streams benefit from the freshened spawning beds the prospector's leave behind. It will be nice to be able to come over to Indiana and spend some of my time and money in your state while I am doing some prospecting of my own in the streams.

Michael Downing, Miami County, Indiana (February 23, 2009)

Thank you for clarifying and possibly amending the rule. It will be nice to prospect responsibly and know which waters are off limit.

Raymond M. Stanis, Jr., Watseka, Illinois (February 25, 2009)

I have been gold prospecting for 7 years now, and I support this bill 100%. Me and my family can go out for the day and have a great time outdoors and get some exercise to boot. It would be a shame to lose such an activity for my family.

Tony Lovatto, Huntington, Indiana (February 27, 2009)

Gold prospecting has many positive effects on the environment and economy. It is a hobby that can be enjoyed by many and can involve the family. You will find that many of the people that enjoy weekend prospecting for gold are the same people who hunt, fish and do many other things outdoor related. I can speak for myself and everyone that I know involved in these hobbies and say that we all try to leave an area better than we found it because this is the only way it can be preserved for our future and enjoyed at the same time. Thank you for providing these means of enjoyment to the people who can take advantage of them and working with the people who support and pay taxes for this purpose.

Matthew Kelly, Grant County, Indiana (February 28, 2009)

I want to thank you all for working with hobbyist so we can enjoy prospecting and the natural beauty of Indiana.

James Boyle, Mt. Prospect, Illinois (March 1, 2009)

I believe these rules are fair and good for Indiana and recreational prospectors. I have personally removed several pounds of lead and small amounts of Mercury from Indiana's waterways and had a lot of fun doing it. I have also contributed to Indiana's economy purchasing food fuel and lodging. Thank you for giving this important matter your attention.

Tim Skees (GPAA, LDMA, Weekend Gold Miners, Southern Prospector Show), Grayson, Kentucky (March 4, 2009)

I spend a considerable amount of time and money visiting Indiana prospecting in the state's streams. I feel a small fee, or permit wouldn't hurt anything, however, the amount of gold/minerals taken by prospectors is usually a 5 gallon bucket full per week at best. I feel the environment does not suffer in any way due to prospecting, rather it improves fish habitat, by aerating the creek beds, and waters. Fish nearly always come to the dredge and try to grab foods and prey stirred up by dredging, and feed off them. If we have to buy a small permit, that is fine by me, however, if we were prohibited from prospecting, speaking for myself, Indiana would lose approximately \$5,000 plus in what I spend each year, just from me alone. The revenue brought to local businesses is significant, and should be considered in any decision.

Thomas Young, Marshall County, Indiana (March 5, 2009)

I want to thank the NRC and the DNR for working with Indiana prospectors for putting together a set of rules and regulations that will allow for our hobby and recreational prospecting to continue. I hope for a passage of the rules.

James Owens, Rush County, Indiana (March 5, 2009)

Recreational gold prospecting is truly a way to have family outings in our Federal and State Parks and Forests. No one gets monetarily rich from these outings but they do become closer to their environment. They learn respect for their surroundings. The State of Indiana needs to adopt rules to enhance this activity, not hinder it.

Tom Van Vleet, Aurora, Illinois (March 7, 2009)

Thanks, the new rules look encouraging. Please define what Riparian means? Why is it necessary to get written property owner permissions? Some landowners don't seem to want to be bothered I have found, beyond a verbal ok? Also, as far as motorized gear, it only lists suction dredges? What about motorized high bankers, small trommels, metal detecting for gold in the creeks? Chuck Lassiter knows about these things if you have questions? I don't want to get ticketed on a technicality, motorized machine wise, as I prefer to use a high banker with a dredge nozzle attached or my shovel.

Darrin Batman, Moultrie, Illinois (March 19, 2009)

I have been going to Indiana for over a year panning and sluicing, and have decided to try dredging. My family loves prospecting in Indiana, and I hope we will be able to continue doing so.

Stephen J. Wlock (Northeast Pennsylvania Gold Prospectors), Sayre, Pennsylvania (March 21, 2009)

Ya know I just want to say that the prospector is not the one harming the water ways. Nature will do more damage then we would plus we clean out the lead and any other stuff we find. And, after dredging, the fish have new places to spawn and food. So what is wrong with you people who want to keep water ways clean? We do that for you at no cost to you. Again, we are not talking about full scale mining just the weekend guy.

Dennis Dale Jones, Montgomery County, Indiana, (March 30, 2009)

I appreciate the hard work and study that has gone into the proposal for Prospecting in Waterways. I am hopeful that this new law will be passed as proposed. Thank you for your efforts!

Steve Riggs, Louisville, Kentucky (July 6, 2009)

I am good for Indiana's economy because I travel to Indiana for family oriented prospecting like in Morgan Monroe and spend money and pay taxes in Indiana. I also do recreational prospecting in streams. I take great care to watch out for the environment and even take out trash and toxic materials found in the water. People use streams for recreation in various ways; canoeing, fishing, and in my case rock hounding and prospecting. As long as fair rules are set, everything will be fine. Size limits like 4 or 5" on dredges make good sense and keeps it in the hobby mode.

James O. McIntyre, Columbus, Indiana, GPAA/Central Indiana GPAA, (July 4, 2009)

I am satisfied with the proposal as it currently reads. However I am concerned that the IDNR/NRC may require a fee for permits, I would be opposed to any permitting fees associated with this current proposal.

Michael G. Phelps, Brookston, Indiana (August 8, 2009)

I fully support the proposed rules as written, concerning Prospecting in Indiana. I believe these rules will adequately protect the environment and wildlife while providing a fair structure for those who wish to pursue this recreational activity.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-80(F)

DIGEST

Adds 312 IAC 6-2-3.8, 312 IAC 6-2-6.8, and 312 IAC 6-5-10 concerning navigable waters and 312 IAC 10-2-24.5, 312 IAC 10-2-33.3, and 312 IAC 10-5-11 concerning nonnavigable waters to address general licenses and individual licenses that govern prospecting for hard mineral resources. Effective 30 days after filing with the Publisher.

312 IAC 6-2-3.8; 312 IAC 6-2-6.8; 312 IAC 6-5-10; 312 IAC 10-2-24.5; 312 IAC 10-2-33.3; 312 IAC 10-5-11

SECTION 1. 312 IAC 6-2-3.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-3.8 "Hard mineral resources" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 3.8. "Hard mineral resources" means naturally occurring alluvial deposits of the following:

- (1) Gold.
- (2) Platinum.
- (3) Silver.
- (4) Lead.
- (5) Copper.
- (6) Diamonds and other gemstones.
- (7) Other similar materials.

(Natural Resources Commission; 312 IAC 6-2-3.8; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 2. 312 IAC 6-2-6.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-6.8 "Prospecting" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 6.8. "Prospecting" refers to activities conducted in preparation for or to remove hard mineral resources.

(Natural Resources Commission; 312 IAC 6-2-6.8; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 3. 312 IAC 6-5-10 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-5-10 Prospecting in a navigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-22-34-12; IC 14-28-1; IC 14-29-1; IC 14-29-3

Sec. 10. (a) This section governs prospecting in a navigable waterway that is subject to IC 14-28-1, IC 14-29-1, or IC 14-29-3.

(b) Unless otherwise provided in this section, a person must not engage in prospecting except as approved by the department in a written license.

(c) Without a written license or notice to the department, and except as provided in subsection (d), a person may engage in prospecting within the ordinary high watermark of a navigable waterway upon compliance with each of the following conditions:

- (1) Lawful ingress to and egress from the navigable waterway is obtained.
- (2) Written permission is obtained from any affected riparian owner.
- (3) Prospecting is performed exclusively by one (1) or a combination of the following processes:
 - (A) Without the use of equipment.
 - (B) With the use of nonmotorized equipment, such as a pan, sluice box, or pick and shovel.
 - (C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle that has an opening not larger than five (5) inches in diameter.
- (4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.
- (5) Activities occur exclusively between sunrise and sunset.
- (6) No mussels are taken as prescribed by 312 IAC 9-9-3.
- (7) No endangered species are taken as prescribed by IC 14-22-34-12.

(d) The following waterways do not qualify for prospecting under subsection (c) or under 312 IAC 10-5-11(c):

- (1) Big Blue River in Harrison County, Crawford County, and Washington County from river mile 57.2 downstream to river mile 11.5.
- (2) The East Branch of the Little Calumet River in Porter County.
- (3) Lake Michigan.
- (4) The Portage Burns Waterway in Porter County.
- (5) St. Joseph River in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Michigan State Line.

(e) Nothing in this section is intended to modify the rights of riparian owners.

(Natural Resources Commission; 312 IAC 6-5-10; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 4. 312 IAC 10-2-24.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-24.5 "Hard mineral resources" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 24.5. "Hard mineral resources" means naturally occurring alluvial deposits of the following:

- (1) Gold.
- (2) Platinum.
- (3) Silver.
- (4) Lead.
- (5) Copper.
- (6) Diamonds and other gemstones.
- (7) Other similar materials.

(Natural Resources Commission; 312 IAC 10-2-24.5; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 5. 312 IAC 10-2-33.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-33.3 "Prospecting" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8
Affected: IC 14-28-1; IC 14-29-1

Sec. 33.3. "Prospecting" refers to activities conducted in preparation for or to remove hard mineral resources.

(Natural Resources Commission; 312 IAC 10-2-33.3; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 6. 312 IAC 10-5-11 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-11 Prospecting in a nonnavigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5;
Affected: IC 14-28-1; IC 14-29-1; IC 14-22-34-12

Sec. 11. (a) This section governs prospecting in a nonnavigable waterway that is subject to IC 14-28-1 and this article.

(b) Unless otherwise provided in this section, a person must not engage in prospecting in a nonnavigable waterway except as approved by the department in a written license.

(c) Without a written license or notice to the department, a person may engage in prospecting in a nonnavigable waterway upon compliance with each of the following conditions:

- (1) Lawful ingress to and egress from the waterway is obtained.**
- (2) Written permission is obtained from the property owner or owners.**
- (3) Prospecting is performed exclusively by one (1) or a combination of the following processes:**
 - (A) Without the use of equipment.**
 - (B) With the use of nonmotorized equipment, such as a pan, sluice box, or pick and shovel.**
 - (C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle that has an opening not larger than five (5) inches in diameter.**
- (4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.**
- (5) Activities occur exclusively between sunrise and sunset.**
- (6) No mussels are taken as prescribed by 312 IAC 9-9-3.**
- (7) No endangered species are taken as prescribed by IC 14-22-34-12.**

(d) In addition to the waterways disqualified by 312 IAC 6-5-10(d), the following waterways do not qualify for prospecting under subsection (c):

- (1) Cedar Creek in Allen County and Dekalb County from river mile 13.7 to the confluence with the St. Joseph River.**
- (2) Galien River in LaPorte County and its tributaries.**
- (3) North Fork of Wildcat Creek in Tippecanoe County and Carroll County from river mile 43.11 to river mile 4.82 and the South Fork of Wildcat Creek in Tippecanoe County from river mile 10.21 to river mile 0.00.**
- (4) Trail Creek in LaPorte County and its tributaries.**
- (5) Tributaries of the East Branch of the Little Calumet River.**
- (6) Tributaries of the St. Joseph River that have their confluences downstream of the Twin Branch Dam in Mishawaka.**

(e) Nothing in this section is intended to modify the rights of riparian owners.

(Natural Resources Commission; 312 IAC 10-5-11; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

LSA Document #09-60(F)

(Administrative Cause Number 09-019D)

Filed with the Publisher: November 12, 2009, 3:53 p.m.

Small Business Regulatory Coordinator

Linnea Petercheff, Staff Specialist, Division of Fish and Wildlife, Department of Natural Resources, 402 W. Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-6527, lpetercheff@dnr.in.gov

Document History

LSA Document #09-60(F)

Notice of Intent: 20090128-IR-312090060NIA

Proposed Rule: 20090722-IR-312090060PRA

Hearing Held: August 13, 2009

Approved by Attorney General: October 30, 2009

Approved by Governor: November 12, 2009

Filed with Publisher: November 12, 2009, 3:53 p.m.

Documents Incorporated by Reference: None Received by Publisher

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On November 25, 2009, the Small Business Regulatory Coordinator, Linnea Petercheff, filed the following:

The number of comments, complaints, and questions received by the you from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

None are known to be from small businesses. However, five (5) comments could be from individuals who own or are president of a small business. These comments related to the rule change to allow youth hunters to take an antlered deer during the special youth deer season.

The number of complaints or questions reported under subsection (1) that were resolved to the satisfaction of the agency and the small businesses involved; and

Three comments were resolved to the satisfaction of the DNR and businesses involved. The Natural Resources Commission voted to approve the rule change to allow youth hunters to take an antlered or antlerless deer during the special youth deer season.

Estimated time spent carrying out your duties as SBRC during the most recent state fiscal year, categorized by LSA Document numbers involved.

Two (2) hours.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-80(F) at its September 22, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated [INSERT DATE]:

...

REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

The public hearing was conducted as scheduled on August 13, 2009 at 6:00 p.m. at McCormicks Creek State Park, Canyon Inn, Oak Room, 451 McCormicks Creek Park Road, Spencer, Indiana. Hearing Officer, Sandra Jensen, was present along with Linnea Petercheff of the Department's Division of Fish and Wildlife and Major Steve Hunter of the Department's Division of Law Enforcement. Five members of the public appeared and three offered comments that are summarized here.

Alan Mears, Fountain County, Indiana

Mr. Mears stated that he is all for the rule amendment as proposed. He added that his son has had an opportunity two years to take a buck and couldn't. Mr. Mears noted that he has discussed this with Conservation Officers and has been told that the main concern is that fathers will go out and take an antlered deer and use their son's or daughter's youth license to tag it. Mr. Mears observed that hunters who abide by the rules will abide by the rules and hunters that don't abide by the rules never will and stated his opinion that this rule will not have an impact in that area.

Jack Corpuz, Indianapolis, Indiana

Mr. Corpuz stated that he was among an ad hoc group of individuals that, in 2005, proposed several youth license ideas to the Department. One of those proposals was for the establishment of a youth deer season. He advised that the original proposal would not have prohibited youths hunting during the youth season from taking an antlered deer. Mr. Corpuz stated that he would like to see this rule proposal adopted to bring this youth season back to what was originally proposed to the Department.

Jeff Weedling, Mooresville, Indiana

Mr. Weedling stated that he agreed with everything stated by Mr. Corpuz.

b) Comments Received Outside Public Hearing

The following written comments were received from members of the public outside of the public hearing held on August 13, 2009.

Bobby Hardwick, Mitchell, Indiana (email: January 23, 2009)

I agree with the proposed change to make the Youth deer hunt either sex. I also believe that if a buck is taken during the youth season it should be in addition to the regular archery/firearm/muzzleloader buck.

Roger Eubank, Howard County, Indiana (email: January 23, 2009)

Please allow our kids to enjoy this youth weekend to its fullest extent. I had a chance to let my son shoot his first buck last season and had to turn it down. That was a total heartbreak for him. This buck was only a spike. So please consider the rules change for the kids sake.

Steve Griffey, Peru, Indiana (email: January 23, 2009)

I would like to offer my input on the rule changes proposed for the Indiana Youth season. I whole heartedly SUPPORT letting our youth hunters have an either sex tag for the youth season. I just as strongly DO NOT support allowing firearms to be loaded after legal shooting hours are over.

Nicole Piel, Kokomo, Indiana (email: January 23, 2009)

I am in favor of the following proposed changes: Allowing youth under the age of 18 to participate in the youth season deer hunt; and allowing youth to take either sex deer.

Todd Doty, Cass County, Indiana (email: January 25, 2009)

Being a parent of a young hunter I would like to see the rule of ether sex of deer to be taken during youth season as far as the loaded firearms go i should not be change. Thanks for the time.

James Earl Warren, Clark County, Indiana (email: January 23, 2009)

I am a lifetime member of the Indiana Hunter Ed Association. President of Clark Co. Chapter of the National Wild Turkey association. Also on the Indiana state board of directors for the National Wild Turkey Association. I love the 1 buck rule, and I think the youth season is the best thing Indiana has done in a long time. I believe the kids should have the opportunity to harvest a buck. It could make a memory that would last a lifetime. Why anyone would be so selfish to try to save the bucks for themselves, they probably don't have kids, and should not reproduce.

Paul Vice, Seymour, Indiana (email: January 30, 2009)

I support PART of this proposal. That part allowing the youth deer season to have a one deer, either sex, bag limit. I oppose the idea of changing the age limit of youth only seasons from "under 16 at time of hunt" to "under 18 at time of hunt". The youth seasons should be the absolute safest timeframe for youth hunters to be in the field. The new proposal, as written, will allow a couple high school age seniors to participate without adult supervision. I would suggest the DNR either leave the age limit alone....or raise the age of the supervising hunter to 21.

Mark Lyon, Johnson County, Indiana (email: January 29, 2009)

I would vote to approve. If a buck walks out in the youth season, you shouldn't have to tall your son/daughter that they can't shoot it. Especially if it's their first. We want them to have the best experience, right???

Mark Fink, Hendricks County, Indiana (email: January 29, 2009)

I support this rule change as stated. Youths should have every opportunity that adults have.

Jack Corpuz, Indianapolis, Indiana (email: January 29, 2009)

Fully support this change to the youth season.

Corpuz again commented by email on March 27, 2009

Absolutely support the proposal to allow youth to take an antlered deer during the youth deer season.

Earnest Needham, Indianapolis, Indiana (email: January 30, 2009)

This would be a good idea. We are there with the youth hunter, to guide them, and we could help them to choose. We could counsel them, as to take a lesser buck, before the rut begins. This may make them less apt to get "Buck Fever" when they are faced with a mature buck later. This also would allow mature bucks to pass on their genes each year.

Clarence H. Williams, Warrick County, Indiana (email: January 29, 2009)

I am fully in favor of allowing our youth to take either sex deer during the youth hunt. It is about time that we treat our youth as equals in the deer hunting world. No other deer hunting group in Indiana is restricted to antlerless only. Thank you for forwarding this proposal.

Williams also wrote by email on January 30, 2009

On my website at WWW.Hunt-Indiana.com we were very interested in this subject. We had a lot of great discussion on it and conducted a poll. The poll was about allowing the youth to take a buck during the youth weekend. This poll can only be voted on by members and they can only vote once. At present we have 1,735 members and 115 chose to give input. The results are as follows:

Strongly Support 80 votes (69.5%)

Support 16 votes (13.9%)
Neither 2 votes (1.7%)
Oppose 7 votes (6%)
Strongly Oppose 10 votes (8.6%)

Those in support 83.4%
Those opposed 14.6%

As you can see the results were over whelming in favor of the youth being allowed to take either sex during their youth hunt.

Williams again wrote by email on March 27, 2009:

I am 100% in favor of allowing the youth to take either sex deer during the youth weekend. Right now they are the only group out there that can not take an antlered deer during their hunt. That is not right.

Donald Scott Imel, Jefferson, Indiana (email: January 30, 2009)

I agree with the amendment that will allow a youth hunter accompanied by an adult to take any deer that walks in front of them.

Kevin Klumper, Pike County, Indiana (email: January 31, 2009)

During the youth deer season I would like to see the rule changed to allow the youth hunter to harvest an antlered deer. Many I have talked to would like to see the same. If not I would like to know the reason they can't.

David Engelking, Nineveh, Indiana (email: January 30, 2009)

I believe that youths should have the opportunity to take either sex deer during the youth season. They should have the same opportunity during their season as all the other seasons.

Kevin B. Ailes, Camby, Indiana (email: January 31, 2009)

I am in full support of the changes to the youth deer season. Recruiting new youth deer hunters is the only way this sport will survive in the future.

Loyd Roberts, Dearborn County, Indiana (email: February 2, 2009)

I think that the youth should be able to take either a buck or doe in hunting season and the part that eliminates the buck should be changed to include these in the law.

Steve Scudder, Ripley County, Indiana (email: February 3, 2009)

First off, I want to say what a great thing the youth deer season has become, and want to commend everyone involved for making it possible... Thank you from me and my sons.

To the point of allowing antlered deer to be taken during the youth deer season, I am completely for allowing them the chance for an antlered deer. If the youth season was started for the purpose of getting the youth involved in the great sport of hunting, and not for management purposes, I see no reason why they should not be allowed the chance. Most youth will shoot the first deer they see if given the chance, regardless if it has antlers or not. But, when a child has their first deer step out and it has antlers and they have to watch it walk away because they aren't allowed to shoot that deer, even though he/she is deer hunting, it can be very discouraging to them. A deer is a deer to the majority of the youth that are able to make it to the woods for their first time anyway.

I hope this issue is looked at more for the sake of getting the youth involved rather than restricting them and hope that it will be passed to allow the youth to take either sex deer, antlers or no antlers.

Carson Stailey, Orange County, Indiana (email: February 3, 2009)

My name is Carson. I am 11 years old. When I was nine it was the second day of youth season. I had a big, big six point buck come at 15 yards. It stood at 15 yards for at least 10 minutes. Another bad thing was there were two other bucks with it. So I'm begging let kids shoot bucks in youth season! I had never

shot a buck or deer with a bow! That year I had to settle for a little 4 point. I also killed a doe that night. It's time to change the law!

Brian Juris, Hobart, Indiana (email: February 4, 2009)

I would like to see kids be able to harvest a deer of either sex during the two day season. you don't always see a doe some times you see a buck and with 4 young boys they want to harvest a buck instead of a doe.

Shane Deford, Peru, Indiana (email: February 4, 2009)

This would be a great way to encourage kids to continue to hunt. Indiana has some fine bucks why not give the kids first crack at them.

Bruce Cunningham, Harrison County, Indiana (email: February 4, 2009)

I agree with the proposed changes to the rule that would allow an antlered deer or antlerless deer to be harvested by a youth hunter. I also agree with the proposed rule change that would change the age of a "youth" hunter to under 18 years of age. I never quite understood why the original "youth deer season" did not match the "youth hunting license" age limit. Both of these proposed changes are good for the youth of Indiana.

William C. Herring, Morgan County, Indiana (email: February 5, 2009)

I recommend NO change to the Youth Deer Season until other, more pressing potential changes to overall deer hunting rules are adequately examined. These potential changes include, but are not limited to issues dealing with Urban Deer Zones, bag limits and related rules for counties in which large numbers of vehicle-deer collisions occur, bag limits in counties in which DNR currently allows 4 or more Bonus Antlerless deer to be taken, and the overall structuring of deer hunting rules. Whether youth should be allowed to take an antlered deer in the Special Youth Season impacts potential changes in philosophy and restructuring of the "bigger picture" of deer hunting rules in Indiana. For example, allowing ONLY antlerless deer to be taken BEFORE the Early Statewide Archery Season would be more consistent, more easily understood by all (including hunters, check station operators, COs, and meat processors), minimize real and potential illegal taking of antlered deer during early seasons, and more directly target antlerless deer as the most effective way to control deer numbers in specified areas and counties.

Wade Alan Carpenter, Jr., Ripley County, Indiana (email: February 6, 2009)

I think allowing either sex to be taken is a great idea and I believe it would only further peak the child's interest if there is the prospect of taking that "Trophy Buck" that is so coveted by Dad!

Greg Eley, Grant County, Indiana (email: February 11, 2009)

In favor of allowing harvest of antlered deer during youth weekend.

Gary Graf, Clark County, Indiana, 4-H, Indiana Hunters Education, (email: February 19, 2009)

I am all for the proposal of allowing our youth take a antlered deer during their early gun season. If we are really trying to promote hunting to our youth, let them hunt in the early season during good weather and it should increase their chances and draw more youth to the sport.

Rod DeRoo, Decatur, Indiana (email: March 28, 2009)

Let youths harvest any sex of deer during the Youth Season!

Joe Bacon, (Indiana Deer Hunters Assoc.), Marion, Indiana (email: April 1, 2009)

Please keep the youth hunt as an antlerless season only. We need to give youth a chance to hunt in a special season, but they also have the regular season to buck hunt like all other hunters. When the season was created it was for an opportunity for an adult and youth to hunt together, the idea was to teach youth it is ok to shoot a doe. If the youth kills a buck during the early season it maybe difficult to motivate that youth to antlerless hunt later in the regular seasons. The youth could be tired from other activities, or the weather is cold. We all realize how fickle a youth can be.

As we proposed and created this rule (yes I was involved) we had a reason to make it antlerless only, we created a season structure that almost assured the youth would be out again with their mentor in the same

year hunting for that "buck". Don't be fooled by those who say we did not want youth killing "our bucks". It was a very well planned hunt, involve and hook the youth on hunting, then get him/her out again in a regular season.

Brian Ferguson, Evansville, Indiana ((email: March 28, 2009)

Youth hunts should allow youth to harvest either a buck or doe during that weekend.

Doug Clipp, Columbus, IN (email: June 18, 2009)

I am 100% in favor of letting the kids take bucks during the youth season along with the other proposals. My kids have chose not to participate in the youth hunt the last couple of years for that very reason. I do not push them to be trophy hunters but society has....

Tom Bauters, Akron, IN (email: June 23, 2009)

The proposed youth season hunting changes are a wonderful idea. The idea of being able to sit with my 15 year old son, as he harvests either a buck or doe, is a memory that would be treasured for a lifetime. As such, please enact this proposal.

In addition, next session, please reconsider readopting the lifetime hunting/fishing license as this is a license that a parent can purchase and pass along to a son/daughter as a gift that lasts a lifetime.

Jeff Pease, Newburgh, IN (email: July 4, 2009)

My son and I were very excited to see that Indiana has a two day youth season before anyone else gets to go out. Then we were even more disappointed when I read the rules and saw that the kids can only shoot an antlerless deer. This is the most ridiculous rule that I have ever seen. This hunt is for the kids and I am sure that there will many first time deer hunters in the woods for these two days. I am in the belief that you become a better hunter by the time you spend in the woods and you learn something every time you're in the woods and something when you harvest a deer. I can't believe that if we see a buck I have to tell my son that he can't shoot it for his first deer. Since this is my sons first deer hunt, I want him to shoot an adult deer, doe or a buck. Of course you can imagine that if he got a buck as his first deer, he would be so happy. The bottom line is that this season is for the kids, so don't put a crazy restriction on them where they have to pass up a buck. If we are too worried about harvesting too many bucks, make the law that if they kill a buck they can't kill another one for the balance of the season. I am in favor of Indiana hunters only having one buck tag so this doesn't need to be any different. One buck, regardless if it is in the youth season or the regular deer season.

Jason Stone, St. Joseph, IN (email: July 06, 2009)

I support allowing youth hunters to take bucks during the youth season.

Mike Clabaugh, Huntington, IN (email: July 15, 2009)

Youth hunters should be able to take a deer of either sex during the youth hunt weekend.

Kevin Ailes, Franklin, IN (email: July 15, 2009)

I support the proposed rule change to allow youth deer hunters the opportunity to harvest their one and only buck per deer season during the youth deer hunt. Please consider passing this rule!

Kevin Lee Conner, Johnson County, IN (email: July 16, 2009)

I support youth hunters being able to take a deer of either sex during the youth hunt.

Chris A Fischvogt, Scipio, IN, IDHA (email: July 16, 2009)

Treat the youths equally. Let them kill bucks during their youth season.

Tim Nussbaum, Warsaw, IN (email: July 16, 2009)

I am against youth taking a buck during youth season. We have already given them the opportunity to hunt deer with a gun in September.....since somehow they couldn't enjoy or get into hunting like we all did in the past when we were kids? We continue to give kids "special privs" and forget the value of simply having the privilege to hunt in the first place. Now give them "special privs" to take a buck before

everyone else for fear they may not enjoy or get into hunting via traditional means????? Kids will still like and get into hunting without this "handout".....and will probably appreciate it more when they accomplish their deer hunting goal of taking a buck with the rest of us. Totally against this concept for kids clear up to age 17.....not needed!!

Calvin Lake, Howard, IN (email: July 16, 2009)

It is my opinion that this somewhat flies in the face of the original herd management aspect of this season and raises the pressure on the child to shoot a buck rather than just any deer. It was my understanding at the first meetings and talks about the need for a youth season that this thing was never intended for bucks to be targeted in this special season. However if this "must" happen it would be my opinion that this should count as their only and single buck of the year to fallow the current OBR that is in effect here for all hunters. That said if they are going to be allowed a buck in Youth season and a second in regular season then the second buck should be reinstated for all hunters and buck bag limits and rules set to the pre OBR regs cover the buck language. This is the only fair for all hunters and reasonable action that this should fallow if they are allowed 2 bucks a year. I believe that this opinion will not be popular but we are all hunters. And all the hunters I know became deer hunters without the special regs and early gun hunt. That includes my two sons who hunted deer in this state since they were very young. They are now 20 and 18. My question and concern is what has changed so drastically from when they were considered youth hunters to the imperative need to shoot a buck outside regular season. Are there too many buck deer now is this the case then reinstate the TBR now and be done with it. Or are we simply going free up dad from taking his kids in regular season a responsibility that all hunting fathers grandfathers and brothers have always had to perpetuate hunting to our youth, I think this is the real reason behind this whole thing. I gave up my hunting time to get them to the woods and set them up and set with them every year till they grew up enough to move away from them to hunt alone to get shots at their bucks/deer in regular hunting season. They did not quit or expect special treatment and neither did I or the dozens of hunters I hunt with yearly. It is my feeling that hunting fathers or mentors can and should take the children in regular season not just Youth season and this law gives self severing adult hunters a free pass to leave the kids at home when the regular season is in that way they will not be bothered by JR. Just my humble opinion leave it where it is its fine how it is.

Rod DeRoo, Decatur, IN (email: July 16, 2009)

I see no reason to not allow youths to shoot an antlered deer. They should be able to harvest any deer that gives them a decent shot!

Marcell Watson, Indianapolis, IN (email: July 16, 2009)

I fully support taking of either sex deer during youth hunts. One of the main purpose of this season is to attract younger hunters and allowing taking of either sex deer would greatly increase the chances of our young hunters.

John H Ogden, Grant, IN (email: July 16, 2009)

I personally don't see a problem with letting the youth shoot a deer of either sex. It could possibly be the only time they get a chance to shoot a buck there entire life. I know hunters that have hunted over 20 years and never even got a chance at a deer.

Derrick Grant, Greenville, IN (email: July 16, 2009)

Let the kids take a buck. Way limit them to what they can do we are trying to get them involved.

Mark Fink, Pittsboro, IN (email: July 16, 2009)

I support this rule change 150%! This is a great change that will help recruit more youths into hunting and hopefully that will mean less youth getting involved in drugs, gangs etc. By allowing a buck to be taken a youth hunter can now, if they are so inclined, dream of that monster buck!

Clarence (Woody) Williams, Warrick, IN, WWW.Hunt-Indiana.com (email: July 16, 2009)

YES, ABSOLUTELY YES. I am a firm believer that ALL hunters should be treated equally. No other deer hunter group is restricted to what gender of deer that they can shoot. Why should the youth be penalized just because they are youths? I do believe that if a youth shoots an antlered deer in the youth season it

should count against their yearly buck limit. If it is a one-buck limit what difference does it make if the youth kills it in the youth weekend or a week later in bow season or a month later in the firearm season? I have heard all the excuses, but no really valid reasons, for not allowing the youth to take either sex during the youth deer weekend. In my opinion, none holds water.

1) Some say that dad will shoot the buck for the youth. The people that believe that must know different dads than I do. I do not know of any dad that would grab the gun out of the hands of his mentored youth to shoot a buck, no matter what size the buck is. If that happened it would be an enforcement issue. Basically all youth are being kept from hunting either sex on what an extremely small minority just "might do". Regulations should not be made on what someone "might do".

2) Others say we should teach the youths "deer management" by insisting that they shoot does only. According to the Quality Deer Management Association "deer management" is not limited to just killing antlerless deer, but also includes taking of some bucks. Teach the youth to deer hunt first. There is always time to teach them what the mentor "thinks" is proper deer management.

3) Some says that some farmers will not open their land to the youth if they have the opportunity to shoot either sex. The IDNR allowing the youths to take a deer of either sex does not supersede what the farmer allows to take on his/her farm. The farmer can say "NoBucks" and the youth and their mentor can accept that or find another farm to hunt. Most farmers are dads and moms too and I do believe that they will allow a youth to take the first deer that comes along buck or doe.

115 members of www.hunt-indiana.com participated in a poll on this subject. 96 or 83.4% of the members who participated were in favor of allowing the youth to take either sex deer during the youth hunt weekend. Only members can vote in the poll and they can only vote once.

Strongly Support (80 votes, 69.5%)
Support (16 votes, 13.9%)
Neither (2 votes, 1.7%)
Oppose (7 votes, 6%)
Strongly Oppose (10 votes, 8.6%)

A similar poll on another Indiana hunting website garnered very similar results, albeit not as many members voted. 40 members gave their input and 25 of the members (62.5%) said that youths should be able to take either sex deer. 15 members (37.5%) said no. Please consider allowing our youth to hunt the same gender of deer that we can hunt..

Tom Conely, Meade, KY, Grandview Hunting Clubs, LLC (email: July 16, 2009)

Absolutely, give the youth a chance at either sex. Deer are born very near a 50/50 male/female sex ratio, so they should be harvested at that same rate. If youth are allowed to hunt deer, they should be allowed to harvest either sex. It's good sound quality deer management to do so and also good for keeping youth hunters interested in the sport of hunting.

Chad A. Zartman, Warsaw, IN (email: July 16, 2009)

Oppose. Youth hunters are excited to shoot any deer, even does. This change would counter act what the state has been trying to accomplish, which is to have more mature bucks in the herd. I do not think this would generate more license sales.

Brandi Jordan, Auburn, IN (email: July 16, 2009)

Please allow youth to take a buck during the youth season. This will help with youth recruitment.

Bob Houseworth Jr., Morgan, IN (email: July 17, 2009)

IMHO youth hunters do not need all of the special rules. They might as well learn early on what the future of serious deer hunting as an adult has in store for them. It's not an easy outdoor sport but the positive & negative learning experiences are a great education that will provide memories for a lifetime. Successful "tough" hunts usually mean the most to a true deer hunter.

Jason Stone, Granger, IN (email: July 17, 2009)

Youths should be able to harvest any deer they see.

Torry Miller, Decatur, IN (email: July 17, 2009)

I strongly feel that it is necessary to allow a youth to take any deer (antlered or antlerless) if they would like to. Its important to introduce younger hunters to the sport, but not very fair to not allow them to shoot a buck, when its legal to shoot a buck only one week after the youth season.

BJ Schewin, Bartholomew, IN (email: July 17, 2009)

I support the proposed rule regarding youth deer season and being able to take either sex.

Donald Scott Imel, Jefferson, IN (email: July 17, 2009)

I am all for the youth being able to harvest either sex of deer during the youth season. My daughter wants to go, but just doesn't think that she could shoot a mommy deer.

Issaac Elijah Brown, Jennings, IN (email: July 17, 2009)

Please adopt amendment to allow a youth to harvest either sex during the youth deer season. Thru numerous conversations with other sportsmen across the state, most of us can not locate a viable reason not to.

Richard Wayne Mittendorf, Anderson, IN (email: July 17, 2009)

Please allow the taking of a buck or doe during the youth season.

John Kevin Haendiges, Ramsey, IN (email: July 17, 2009)

I firmly support youth being allowed to take either sex of deer during special youth season.

Josh Beck, Hendricks County, IN (email: July 18, 2009)

I fully support youth being able to take a deer of either sex, antlered or antlerless, during the special early youth season.

Carla Sumney Nussbaum, Warsaw, IN (email: July 20, 2009)

I vote AGAINST the Youth Hunters being able to take a buck with a gun during the Youth Season. How will this buck mean more to them if not shot with family in the regular season firearms? I don't get it. I agree that it's neat to see kids having a good time.....but what is hard to understand is how handing kids "high perceived value items "ie a buck, in an easier/special fashion will help them have a better time and understand the true value in what is just handed to them. There still is a VALUE OF PATIENCE that we need not let them forget.....and we still need to remind them that they can already take a doe during their special season.....and have 3 months to take a buck.

Scotty R. Hollan, Scott County, IN (email: July 20, 2009)

The ability to take an antlered deer during the youth season would give young hunters greater expectations on their hunt. I have an eleven year old son who seems to be content with the antlerless only rule, but the opportunity to take an antlered deer during the youth hunt would inspire him to get into the field more.

John Schoonveld, Indianapolis, IN (email: July 20, 2009)

Great rule change. Any way to increase the chances for the youth to have a successful hunt is good by me. With hunter numbers decreasing, anything we can do to attract and keep youth hunters is good. Only complainers I see are the bow hunters who selfishly want first crack at all bucks. Have two youth hunters and soon a third. Success two years ago, then last year all we saw was a buck. It was fun to watch him, but would have been better to harvest him. Please adopt the change.

Brian Allison, Anderson, IN (email: July 20, 2009)

I highly in favor of the proposed rule changes regarding youth hunting. I applaud the DNR for its continual actions to broaden and make youth hunting easier and accessible in Indiana.

Gary Wayne Myers, Angola, IN (email: July 21, 2009)

If a person qualifies for the purchase and use of a "Resident Youth Consolidated Hunting License", why are they to be penalized for their birth date being before the scheduled Special Youth Hunt Dates. As Long as they qualify for the Resident Youth Consolidated Hunting license, they should be allowed to take part in the Special Youth Hunt and eliminate confusion over the different rulings as to who is considered a Youth Hunter.

Keep things simple as to who is a Youth.

Brad A. Davis, Angola IN (email: July 21, 2009)

I would just like to chime in and be on the record for the youth. It makes no sense to me to educate our youth on our passion for wildlife, give them a special weekend before any other hunter can go a field. we even have agreed upon the 1 buck rule statewide, but for some reason restrict the next generation of hunters on their special day to does only when in most cases just a few days later if not at times 1-2 days I as an archer can go a field and legally take that buck that a young hunter had to pass and possibly have to wait till firearm season. I ask who are we trying to educate and inspire for tomorrow's conservation? Let the smiles go wild.

Jay A. Kerkhoff, Velpen, IN (email: July 21, 2009)

I don't believe youth should be allowed to take a buck early. (Too many adults will poach).

William D Newman, Columbus, IN (email: July 21, 2009)

I have three children that enjoy hunting. The more opportunities I can put in front of them to take a deer is good. Thank You for the youth season. If you allowed a buck to be taken it would elevate the excitement level and draw more interest. One reason: There would be the possibility of more shot opportunity with a buck/doe option. Two: Children should not be excluded from taking a trophy along with meat for the freezer. Teach them some times you get a little bonus along with the meat. Last thing: As a parent I would like to see that my children all receive an opportunity at a buck sometime during the season. Last year proved to be difficult. Only one of the three even had an opportunity. More opportunity can only be better. I promise we will still shoot the does. That is not the issue it is having the opportunity. Don't leave bucks out it cuts the chance in half.

Sam Whitaker, Kosciusko County, IN (email: July 21, 2009)

I oppose allowing a special youth season for children under eighteen (18) years of age to harvest bucks. I authored plenty of letters to the legislatures concerning the proposed bill 1582. As you know in the bill it would mandate DNR to issue a certain number of antlerless permits. DNR has responded by making Kosciusko County a 8 bag limit on antlerless deer. I have heard DNR officials comment that they do not know how much good the 8 permits will do since hunters will only kill so many deer. Why then would we want to allow our youth to harvest bucks when we really want to harvest the antlerless deer? Seems like we need programs to push for the harvest of antlerless deer not the other way. I have also participated and supported the one buck rule. As a result of that we have a better age class of buck in our deer herd. I see hunters that had quit hunting back into hunting. Hunters can now actually have a chance at harvesting a mature deer and not a one and one half year old deer. The reason for the youth program to begin with is to get the youth involved in hunting since that has been declining. I believe the antlered season may sound good at first to the youth and to DNR but when we slide back to where we were 8 years ago (before the one buck rule) the youth will soon lose interest. Regardless of what DNR may think every hunters wants to see or harvest a mature buck. Since the one buck rule I have seen hunters more excited about hunting then I ever have. They are seeing big mature bucks in the fields in the summer they are getting trail camera pictures of these deer. Hunters are excited. This new excitement is bringing revenue to the state. Let's protect the antlered deer and promote the harvest of antlerless deer.

Jaxon H. Davis, Angola, IN (email: July 22, 2009)

Dear DNR I am a 9 year old 4th grader planning to hunt this year during the youth deer hunt season. I think you should be able to shoot a buck during the youth hunt. A reason why I think kids could shoot a buck is because in the next week your parents can go out and shoot that same buck that you couldn't get . I think the kids would be more excited about hunting. I think that if my dad came home with my trophy I'd be mad. Another option is to let the land owner decide whether or not to let you shoot a buck or not.

Robert M Rudisill, Warrick, IN (email: July 22, 2009)

The rule that allows a youth hunter in youth season to harvest a buck is a very good change. Why should our future hunters be limited to only taking antlerless deer on possibly their first hunt? Keep their interest level high with the opportunity to harvest a nice buck or any buck.

Andrew John Helwig, Bartholomew County, IN, Christian Bowhunters of America
(email: July 22, 2009)

I believe that youth should have the opportunity to take a deer of either sex. Youth early hunt presents an opportunity to introduce kids to the outdoors and to limit it in any way is injustice to the kids.

Gregory Donald Eley, Marion, IN (email: July 22, 2009)

I am favor of allowing youth to take either antlered or antlerless during youth weekend because it encourages youth participation in the sport. Encouraging youth participation in hunting and fishing should continue to be a top priority for IDNR and all other hunting organizations.

Wes Rainey, Bedford, IN (email: July 22, 2009)

I know there will be many arguments about the youth being allowed to take a buck during the special youth season, but I think it will encourage every young hunter to want to continue hunting in the future if they are allowed and successful during their first hunts. I think it would be a good thing to make this change. I believe that the youth should be allowed to hunt during the youth season until age 18, this allows them to get full use of their youth license.

Gery A. Meyer, Dekalb County, IN (email: July 22, 2009)

The youth season limit of one antlerless deer during the youth season should stay as is, bucks should not be allowed to be hunted during the youth season. The age limit should stay at 16. The youth gun season has all but ruined early bow season in the area I hunt, leave the limit and age as is.

Gary Lucas, Brown, IN (email: July 23, 2009)

I do believe that with all that the non-hunting world has to offer our kids that we as hunters should do all we can to teach are children to hunt and fish, I believe the deer herd is strong enough to support a buck or doe kill for a kid, it would not hurt us. I know as a young hunter it would have been hard to understand why I can't shoot the buck standing in front of me, I say let's get are kids hooked on hunting and we won't have to hunt our kids. I also believe we should give them a week hunt, not just the weekend.

Kevin Van Arsdale, Plainfield, IN (email: July 23, 2009)

Proud Parent of a Indiana Youth Deer Hunter/Pass the Heritage Down

Comments: My son and I have had the pleasure of participating in the Indiana Youth Deer Hunts the past 3 years-"And thank you all for giving my son and I that special opportunity". With many life long memories of those hunts and each a successful hunt to us. I believe that my son and all the other youths that participate each year on these special 2-day hunts should have the privilege of taking a deer, buck or doe during this 2-day youth season. If they are so inclined to take a legal buck during this special youth hunt period, it should then count as their one buck for the regular season that year. I don't think this rule change would hurt anything or any one, except for the greedy self absorbed buck hunting adults--that don't want the buck they have picked for themselves that year to get taken by a youth hunter. My son and I have participated on these special youth hunts the past 3 years and he has taken a doe each year, but he would like the opportunity to take a buck if it presented it's self and was the deer he wanted to shoot. We as a family hunt deer for the meat and family time together primarily, not just for the antlers, but he would like to shoot a buck if it was legal and it was a deer he wanted to take.

Matthew S. Barton, Wabash, IN (email: July 24, 2009)

As an avid deer hunter I spend countless hours on stand trying to kill a nice buck. I was ok with the youth taking does in September, but I am against them being able to take a buck in September. The bucks are finally beginning to show some size and even though they would not be able to kill another buck, should they take one in the youth season, bucks are very relaxed in September and many of them would get killed. When I was a kid, I had to hunt the regular seasons, just like everybody else. Killing a big buck in

September, especially with a rifle, is no accomplishment. We got a good thing going with these deer; please don't allow more of them to be killed unnecessarily.

Dustin Waters, Starke County, IN (email: July 24, 2009)

I am all for youth hunters gaining access to the outdoors. I enjoy seeing young hunters succeed, but under the current gun season dates, I don't feel that bucks need to be targeted during the early season. During our current firearms season, bucks are at their most vulnerable state, as they are in full rut and looking for does during day light hours. Our bucks endure a pretty tough toll during that rut with the number of guns in the woods during that season. I don't feel it to be a sound idea to go after them any earlier than that, regardless if it were youth hunters or adults in an early muzzleloader season. Until our season structure changes there is no need to be shooting bucks early in the year, due to the ease it takes to kill a buck during our firearms season structured currently.

Jeff Clark, Hamilton, IN (email: July 24, 2009)

I think the best thing the state has done is to put a youth season in place. It will be a huge help for hunter recruitment, and has given me the opportunity to spend some dedicated time teaching my children how to be a responsible sportsman in the field. Unfortunately the temptation of a big buck standing in front of a guided youth could quickly make a positive situation negative. The temptation of the adult to shoot the buck may prove to be too much, placing the child in a position to be forced to lie to cover for the actions of their guide. The rule should remain doe only to make sure this situation will not occur. A child will always have the opportunity to shoot a buck during the normal season.

Russell D McCoy, La Porte, IN (email: July 25, 2009)

Between my son, son-in-law & myself, we have been taking & will continue to take 4 boys ages 10 to 13, on the youth deer hunt. I think it's a great way to get youngsters involve in the sport & allowing them to use the "handgun cartridge" rifles also gives them the opportunity them to be more accurate without fearing the recoil of a shotgun slug, at least until their old enough to handle it. I also see no reason to keep them from harvesting a buck in the youth hunt as long as the "one buck" rule applies.

Ben Wagner, Jackson, IN (email: July 25, 2009)

I support this amendment. Let me give my buck to a kid as well. Ha Ha. It's all about them and they are our future. Indiana supports the youth very well and I'm very proud of that.

Michael Todd Anderson, Shelbyville, IN (email: July 27, 2009)

I fully support allowing youths the opportunity to harvest a deer of either sex in the youth season. I also believe that if a buck is killed by a youth in the youth season, that should count as their antlered deer for the year. As a father who has seen a disappointed kid that couldn't shoot a buck in the youth season, I fully support this proposal.

Steve Scudder, Ripley County, IN (email: July 27, 2009)

The YOUTH DEER SEASON is a season created to get youth involved. I've heard the comments that it is a "management tool" for the state to down size the antlerless population. If this is the case, then the title should be changed to YOUTH MANAGEMENT HUNT. I was under the assumption though that this was not the case at all. With that said, why are we limiting what the youth can harvest to an antlerless only deer??? They should be able to shoot a DEER. A deer is a deer regardless if it has antlers or not. Most of the youth, including my son, would shoot the first available deer they had a chance to harvest regardless of what it had on it's head or didn't have on it's head. In my opinion, opening the harvest limits to either sex will increase the involvement of the youth in the sport of deer hunting. I've seen it first hand, the disappointing face of a kid that had a buck in range and couldn't shoot it, only to watch it walk off and then look up and ask "Why can't I shoot a buck??" To him I replied, "I don't really know why". Please consider opening the youth deer season to allow them to harvest either sex.

James Edward Sprinkle, English, IN (email: July 29, 2009)

I would like to comment on the youth being able to take a antlered or antlerless deer during the youth season. I am in favor of them killing either sex for many reasons. The first reason is during the youth season the weather is favorable for a young hunter to be out there without being miserably cold. It is not

always this way once the regular firearm season opens. The second reason is that they are just allowed one buck, what makes the difference when they harvest it. The most important reason is that they are our future. We need to do everything we can to make them want to be out there. Nothing is going to get them hooked on hunting more than being able to harvest a buck no matter what season they are hunting in. Last year was the first year my daughter hunted. She was 7. She didn't understand the rule and neither did I. The first morning we were out there a nice 10 pt walked out of course I had explained to her that she couldn't take a buck. This didn't seem like a big deal to her until it was time and there was a buck and she couldn't harvest him. She was trying to be tough for a 7 year old but the tears rolling down her cheeks was telling her true feelings. To me anyone who is against a child being able to harvest either sex during the youth hunt, cannot consider their selves a sportsman. They have to be a selfish hunter who doesn't care about anyone but their selves. It is not going to hurt our deer herd if this rule passes and it is only going to make the kids want to hunt more. Please consider my comments from the heart. This is the most important issue in the future of our hunters.

Mike Winks, Jackson, IN (email: July 30, 2009)

I think it is a bad idea. You will have kids being taught to trophy hunt at an early age. I also believe that a lot of Dads will be waking up their kids to go check in the big buck that they shot for them that morning. The youth season should be an opportunity to harvest does. The state offers several options to take countless antlerless deer. That tells me that people aren't taking enough antlerless deer. Letting the youth take antlered or antlerless will only compound the problem! I also think that the youth season should be for kids 15 and under. They should also have to be accompanied by an adult. This would give people the opportunity to teach safety and ethics to younger hunters. That is what a "Youth" season should be about. Youth that can drive are just getting added hunting opportunities. If the state wants to be uniform, anyone of driving age should have to have a fishing license and buy regular hunting licenses. This would also help generate extra revenue for the state.

Chad Kevin Steckler, Evansville, IN (email: August 2, 2009)

I am very supportive of allowing youth to take an antlered deer during the youth season. The season is designed to get our youth interested in the outdoors and forcing them to pass on what should be a totally legal animal is a detriment to the program as it can leave a child frustrated and uninterested in pursuing the sport further. My daughter had to pass on a very nice 3 1/2 year old buck the first youth season, thankfully it didn't dampen her enthusiasm, however she has yet to encounter a similar deer during season yet. I also support the one buck rule so if the youth gets a buck than that is their buck for the entire season.

Clark Alan Pritchard, Jeffersonville, IN (email: August 3, 2009)

I think the youth is our future. Let them take a buck or a doe in the youth hunt and maybe they will be hooked on deer hunting. We as adult need to encourage the youth to go to the woods and hunt.

Gary Graf, Clark County, IN (email: August 4, 2009)

I would like the rule to be changed to allow the youth to take a buck in the early youth season. It would be a great way to recruit youth to the sport and offer them a chance to take deer less pressured and during milder weather.

Dean Weimer, Garrett, IN (email: August 4, 2009)

I feel that the youth "antlerless only" season should be kept as it is. I think that any youth should be taught the importance of harvesting antlerless deer in the modern era. When I was a youngster I didn't have any clue about deer management. I was happy to harvest any deer when I was a kid. I think from an educational standpoint the rule is just fine like it is. After all any youth hunter would have the same 3 month long season as everyone else to fill their buck tags. I believe that if some youngsters shot a buck in the youth season, many of them would not go back out to try and kill any antlerless deer. Not all of the youth hunters would quit, but many of them would. Some argue that this "antlerless only" season is taking away an "opportunity", but ALL hunters have plenty of opportunity to fill tags all season long. I personally like the youth season the way it is. Young hunters can then hunt the remainder of the season for a buck.

Todd Adrian Wininger, Fort Wayne, IN (email: August 8, 2009)

Taking of a buck should definitely be allowed during the youth-hunts, particularly if the youth is still limited to that one buck.

Abigail Frost, Fort Wayne, IN, Save Maumee Grassroots Org. (email: August 8, 2009)

This is a comment about youth taking antlered deer. I believe my son, who is 13 years old, and has learned to hunt with my father since he was 5, should be able to hunt before the actual season and take antlered deer. It gives him a chance to get to the deer before they "wise up" to all of the other hunters trying to find them.

Brooks W. Langeloh, Whitley, IN (email: August 7, 2009)

I FULLY SUPPORT this change to allow youth to take an antlered deer during youth season. I believe that the goal of youth seasons is to encourage kids to hunt. Their best chance of getting a buck is in youth season. The weather is more favorable for the young kids, we all know that they get cold fast, can't sit still and can't sit very long without getting bored. I think this is a great idea and a good way to promote the hunting heritage. If you are going to allow pre-season deprivation tag holders to shoot bucks I see no reason why youth hunters should not be able to.

Mark Schaefer, Whitley, IN (email: August 7, 2009)

OK with either sex deer during the special youth hunt. May not take an additional antlered deer the remaining of the regular season though.

William LaVigne, Fort Wayne, IN (email: August 7, 2009)

I am a deer hunter and I see no reason not to allow the taking of either sex deer during this youth season. The entire purpose behind having a "youth" season of any kind is to recruit "new blood" into the sport. What better way than this.

Bradley Frost, Fort Wayne, IN (email: August 7, 2009)

Please allow youth hunters to take either sex during the early youth deer hunt. If a young person is able to harvest a nice antlered deer, they will be deer hunters for life and will encourage others to hunt. The only opposition to this proposed rule is selfish adult bow hunters who fear some "young kid" will harvest "their trophy". I have taken m grandson hunting during the early season and all we have seen is antlered deer. During the regular season, my grandson is not seeing antlered deer. I feel it is more difficult for young, inexperienced hunters to harvest antlered deer. Let's give the young people a chance for a antlered trophy. The bow hunters will still get their trophies.

Thomas Johnson, LaGrange, IN (August 7, 2009)

I think it is a good idea to let the kids take a buck during the youth season.

Bill Norton, Grant, IN, Walnut Creek Archery, Inc. (email: August 7, 2009)

As a hunter safety instructor, retired law enforcement officer and owner of Walnut Creek Archery, a deer check-in station, I am in favor of allowing youth in the early youth season to take a buck or doe with any of the same weapons that I am allowed to hunt with.

Jason Pearson, Borden, IN (email: August 8, 2009)

Youth hunters should be able to take a buck or a doe.

Brad Snyder, Liberty, IN (email: August 8, 2009)

Please allow the youth to shoot Buck in the Youth season. This makes no sense as to why they can't the. If it is to stop the "fathers" or adults that are hunting with a youth from poaching this is not right. Some set on poaching and one that would do it with a youth is going to poach no matter what...Let the youth shoot a buck this is what gets the hunting juices following "the thought of old mossy Horns" walking by them and they getting a chance to shoot him. Thank you for thinking about this and please vote the right way for the future of your DNR to keep hunters and adding new ones. Vote Yes

Jeff Eley, Allen, IN (email: August 10, 2009)

Please pass this amendment. Allowing youth to hunt but not take trophy specimens is a travesty. Getting them started early is the best way to keep them interested in something besides video games and MTV!

Kelly Booher, Whitley County, IN (email: August 10, 2009)

I think this is one of the best proposals in recent years. Allowing our youth to take an antlered deer during the youth season is a great way to be able to pass the heritage of hunting to them.

James Foreman, Fort Wayne, IN (email: August 11, 2009)

Not in agreement with changing any sex rule during youth hunting season.

Darrel Groves, Allen, IN (email: August 11, 2009)

I think it would be a great idea to expand the youth hunt and allow them to shoot a buck. What better way to get a new generation excited about the sport? I took my son out 2 years ago and we had to pass on 2 bucks before a doe passed by us. By then the 2 bucks had spooked the doe and he missed his chance for his first deer. I support the amendment to expand the youth hunt.

George E Hoger III, Allen, IN (email: August 11, 2009)

I support youth being able to harvest a buck during the youth season. If they do harvest a buck during the youth season, they can not take another during the rest of the season, "One buck per year".

David Wade Brodbeck, Huntington, IN (email: August 11, 2009)

i think we need to do all we can to keep the children's interest in hunting. So I would like to see were the children could shoot either sex during the youth season. I'm all for it

Bradley K. Jenshak, Monroe, IN (email: August 11, 2009)

I strongly support the taking of either an antlered or antlerless deer during the youth hunt. Each residence is allowed to take one antlered deer per year and they should be allowed to harvest the buck during any seasons. Last year my son and I hunted the youth weekend and saw three deer; an 8 pt, 4 pt and a spike all which were illegal game. Although an extremely rewarding time in the field, he was disappointed that he did not have the opportunity to take one of the bucks. Our two later gun hunts together ended up without seeing any deer in range of our weapons. I also believe that the youth hunt allows a parent/guardian to take a youth in the field during a much safer period due to a significant lesser number of hunters crowding the areas. I am a government civilian and work at Crane which provides for our only hunting opportunities.

Erik Allen Herrberg, Huntington, IN (email: August 12, 2009)

I have an 11 year old son that loves to deer hunt. He has completed the Hunters Education course. For the past two years, he has had a chance to take a buck during the youth season in September. He has been unsuccessful so far to bag a doe. I believe that if this season was intended for our children to have a better chance to succeed in bagging a deer before regular season opens, and then they should be allowed to take either a buck or doe.

Joseph Murphy, Whitley, IN (email: August 12, 2009)

I feel that we should not deprive our young hunters the opportunity to harvest their first buck possibly a trophy during the youth hunting season.

Harry W. Francies II, Fort Wayne, IN (email: August 12, 2009)

I believe the rules should stay as is. Youths have of time during the regular seasons. This is a opportunity to assist in keeping the doe population in control.

Darrel R Walter, Steuben, IN (email: August 12, 2009)

Anterless only during youth hunt.

Bryan Nugent, North Webster, IN (email: August 13, 2009)

Yes - Kids should have the right to shoot a buck! On the youth waterfowl does it say they can't shoot drakes-"No".

Clay Webb, White, IN, Conservation Officer (email: August 13, 2009)

I strongly support the change to allow youths to take antlered deer during the youth season. I am an avid deer hunter and would like to take a trophy deer every season. Unlike some hunters I do not believe my "buck fever" should get in the way of common sense. I do not believe that allowing youths to take antlered deer for 2 days is going to adversely affect my chances at taking a trophy deer and if it does then I guess that is too bad. It is far more important that we introduce young people to hunting and the outdoors and give them the best chance to be successful. By doing so we are developing new hunters which we badly need.

James Meyer, Noble County, IN (email: August 13, 2009)

This is a bad idea. The deer are already spooked enough without adding to the problem.

Brian Traylor, Crawford, IN (email: August 13, 2009)

Organization: Crawford County School Corporation

Comments: Please go forward with these proposed rule changes. We need to continue to work on increasing the success of our youth hunters. This will go a long way to insure that we have a strong future population of Indiana hunters and all hunters will benefit.

Brett A. Beard, Warrick, IN (email: August 14, 2009)

Excellent changes, the only way to keep our sport alive is to continue making it more exciting for our youth.

Nolan Sausaman, North Webster, IN (email: August 14, 2009)

I strongly believe that the youth should be able to harvest a buck during the youth season. If they do indeed harvest a buck during this time period that is still there one for buck for the year, and they would be done buck hunting. It makes no sense to allow bucks to be taken during the depredation hunting period but the youth can't have a two day chance at one. I have a 12 year old daughter that loves to hunt and is fine with taking a doe during the youth season, but having a chance at a buck I feel would increase youth hunting and that is what we need for the future of the sport.

Chad Tom, Leesburg, IN (email: August 14, 2009)

My opinion on this subject is that the kids of our future should be able to harvest a buck of their choice and that will be their buck for that current year. the one buck rule is working great but I think whoever is in charge down in Bloomington needs to get their head out of you know where and get things straight. I saw just last night 8/13/09 a perfect 12pt and a small six pt that a man harvested on a deer reduction tag north of Milford IN. To me and a lot of other people these tags are stupid. I did the deer reduction a few years ago and set it up for all does. Our county can now shoot 8 bonus does. We have to pay for every tag for those deer we shoot. Those people can shoot bucks or does for nothing. Some people I know have got as many as 30 tags to shoot either sex. To me that is just stupid. What the hell do we have a one buck rule for then? The deer reduction tags should be for does only and lower our county Bonus antlerless tags. It only makes sense to most people. If these guys can shoot bucks whatever the size maybe, then the kids should be able to shoot them also. Please get it right for our kids.

Jeff Anglemyer, North Webster, IN (email: August 14, 2009)

I believe that Ind. should let the youth have the right to choose to either take an antlerless or an antlered deer. I have a 11 year old son that is refusing to hunt the youth season because of this issue he would like the option and the right to choose. If the state would like the youth to get interested and stay interested in the outdoors then let's help keep their interest not restrict them. I have 2 sons and the oldest has always been interested in the outdoors I am also trying to share this quality time with my youngest son. So let's help the youth stay interested in nature.

Stuart Grell, Fountain County, IN (email: August 14, 2009)

I want to see the rule change to make it possible for a youth hunter to shoot either antlered or unantlered deer.

Mike McCartin, Allen, IN (email: August 15, 2009)

Youth deer season should be abolished - they lack the necessary judgment to be safe in the woods.

Brad Rozzi, Logansport, IN, Freedom Hunt (email: August 15, 2009)

I am certainly in favor of allowing youth to take either sex during the youth season as long as the one buck rule applies. I cannot understand why we would choose to designate a specific weekend for young hunters, but not allow them to hunt under the same rules and conditions as adults. If our goal is to encourage young hunters to become active in outdoor activities, we should afford them the opportunity to experience the ultimate thrill of bagging a mature whitetail.

Glen Sprinkle, English, IN (U.S. Mail: August 6, 2009)

This written comment is included as Exhibit B.

c) Response by the Department of Natural Resources

The Department of Natural Resources offered the following response to the public comments.

Special Youth Season DNR Response

Currently, the youth deer season allows a youth hunter under the age of 18 to take only one antlerless deer during this special season which lasts for only two (2) days prior to the start of the early archery season. The DNR received a petition in 2008 with over 100 signatures of Indiana residents requesting this rule change. Additionally, the DNR conducted an on-line survey asking deer license buyers their opinion on this issue, and 80% supported this rule change. The DNR has been working to recruit new hunters, and this special season provides an opportunity for youth hunters to hunt for only two (2) days without the large number of hunters being present in the field during the regular deer firearms season. While this special youth season was originally implemented as a deer management tool to give youth hunters a special opportunity to take additional antlerless deer, the DNR believes that it is important that the youth hunter be able to take whichever deer he/she has an opportunity to take first, regardless of whether it is an antlered or antlerless deer. The DNR believes that youth hunters should not have to pass up an antlered deer if that is the first deer that he/she sees within range. Many fathers have complained about their son or daughter only being able to kill an antlerless deer when the first or only deer the youth hunter had within range was an antlered deer (buck). The intent of the DNR is to give youth hunters, especially new ones, an opportunity to hunt under the supervision of an adult and have a special opportunity to take a deer without having to deal with thousands of other hunters in the field during the deer firearms season.

If the youth hunter takes an antlered deer, he/she would not be able to take another antlered deer during the rest of the archery, firearms, or muzzleloader seasons combined, in accordance with the "one buck rule." Youth are not being given the ability to take any more antlered deer than anyone else; they simply are being given an opportunity to hunt deer prior to the deer archery and firearms seasons.

Some individuals have commented on the fact that this may give the adult who takes the youth out hunting an opportunity to illegally harvest a buck prior to the regular deer hunting seasons. The DNR does not believe that this should be the reason for not allowing a youth hunter to take a buck. The majority of deer hunters hunt deer legally; there are always some who will take a deer illegally, regardless of what the rules are, and DNR conservation officers can take appropriate action when violations are committed.

Illinois, Kentucky, Michigan and Ohio all have special youth deer hunting seasons that allow the youth hunter to take a deer of either sex prior to the start of the regular deer firearms season.

There is no requirement that the adult who accompanies the youth hunter take the youth hunter hunting again later that year. Furthermore, the youth hunter may only have this one weekend to go deer hunting due to other commitments with school and family, or for financial reasons, and should not be limited to only antlerless deer during these two (2) days.

Regarding the issue of taking additional antlerless deer, staff from the DNR are reviewing our current deer management strategies and are looking for ways to provide additional opportunities for hunters, not just youth hunters, to take antlerless deer. The DNR believes that the special youth season should be viewed as a hunter recruitment/retention tool as opposed to a management tool to take more antlerless deer. Furthermore, the Natural Resources Advisory Council is reviewing comments from the public regarding the addition of a special antlerless-only deer season and will be providing a recommendation to the Natural Resources Commission on this matter in January of 2010.

Age of youth hunter

The age of youth hunters that can participate in the youth deer hunting season is being increased in a separate rule package (LSA #09-44) to those under the age of 18, instead of 16, in order to be consistent with state statute in IC 14-22-12-1. The resident youth consolidated hunting license and the nonresident youth hunting licenses authorized in IC 14-22-12-1 are available for youth under the age of 18 at the time the youth purchases the license. Furthermore, youth hunters under the age of 18 can also participate in the free youth hunting days authorized in IC 14-22-11-18, and youth under the age of 18 are also now exempt from needing a fishing license to fish in public waters per IC 14-22-1

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-60(F)

DIGEST

Amends 312 IAC 9-3-4 to allow a youth hunter to take either an antlered or antlerless deer during the special youth deer season. Effective 30 days after filing with the Publisher.

312 IAC 9-3-4

SECTION 1. 312 IAC 9-3-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-4 Season dates and bag limits

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 4. (a) An individual must not take more than one (1) deer with each deer license.

(b) The special youth deer season is two (2) consecutive days beginning on the Saturday immediately before October 1 or as approved annually by the director.

(1) The seasonal limit for hunting deer under this subsection is one (1) **antlerless deer of either sex.**

(2) A youth hunter who takes an antlered deer under this subsection may not take another antlered deer during the:

(A) archery seasons established in subsection (c);

(B) firearm season established in subsection (e); or

(C) muzzleloader season established in subsection (f).

(2) (3) As used in this section, "youth" means an individual who is less than eighteen (18) years of age by the date of the hunt.

(3) (4) A youth who hunts a deer under this subsection must be accompanied by an adult of at least eighteen (18) years of age who:

(A) does not possess a firearm, bow and arrow, or crossbow while in the field;

(B) possesses a valid hunting license of any type that is not an apprentice license;

(C) must not accompany more than two (2) youth hunters at any one (1) time; and

(D) must be in close proximity and able to communicate with the youth hunter at all times.

(c) The archery deer season is as follows:

(1) Early archery season is from October 1 through the closing day of firearms season as established in subsection (e).

(2) Late archery season from the first Saturday after the closing day of firearms season as established in subsection (e) through the first Sunday in January.

(3) An individual must take not more than two (2) deer of which only one (1) may be antlered under this subsection.

(4) After August 31, 2012, an individual must not take an antlered deer by means of a crossbow.

(d) The urban deer season is as follows:

(1) From September 15 through the closing day of firearms season as established in subsection (e).

(2) During the late archery season as established in subsection (c)(2).

(3) An individual must take not more than four (4) deer of which only one (1) may be antlered under this subsection.

(4) A deer taken under this subsection does not count against a bag limit for deer set elsewhere in this rule.

(5) The following areas have been designated as urban deer zones subject to the urban deer season:

(A) The Indianapolis urban deer zone includes the following:

- (i) All of Marion County.
- (ii) That portion of Hendricks County east of State Highway 267.
- (iii) The southeast portion of Boone County as bounded by the following:
 - (AA) State Highway 267.
 - (BB) Interstate Highway 65.
 - (CC) State Highway 32.
- (iv) That portion of Hamilton County south of State Highway 32.
- (B) The Fort Wayne urban deer zone includes that portion of Allen County lying within the bounds of Interstate Highway 69 and State Highway 469.
- (C) The Evansville urban deer zone includes all of Vanderburgh County.
- (D) The Lafayette urban deer zone includes the portion of Tippecanoe County north of State Highway 28.
- (E) The Gary urban deer zone includes that portion of Lake County north of U.S. Highway 30.
- (F) The Crown Point urban deer zone includes that portion of Lake County within the corporate limits of Crown Point.
- (G) The Chesterton urban deer zone includes the portion of Porter County north of U.S. Highway 94.
- (H) The Michigan City urban deer zone includes that portion of LaPorte County north of U.S. Highway 94.
- (I) The Warsaw urban deer zone includes the portion of Kosciusko County within the corporate limits of the city of Warsaw.

(e) The firearms deer season is from the first Saturday after November 11 and continues for an additional fifteen (15) days. An individual must take not more than one (1) antlered deer under this subsection.

(f) The deer hunting season for only using a muzzleloading long gun or muzzleloading handgun is from the first Saturday after the closing day of firearms season as established in subsection (e) and continues for an additional fifteen (15) days. An individual must not take more than one (1) deer of either sex under this subsection.

(g) The season and bag limit for hunting antlerless deer in a designated county, by authority of an extra deer bonus antlerless license, shall be established on an annual basis by a temporary rule authorized by the director.

(Natural Resources Commission; 312 IAC 9-3-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 5, 1997, 3:25 p.m.: 21 IR 930; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 538; filed May 25, 2005, 10:15 a.m.: 28 IR 2945; filed Jun 29, 2007, 2:30 p.m.: 20070725-IR-312060272FRA; filed Jul 10, 2007, 2:09 p.m.: 20070808-IR-312060572FRA; filed Sep 6, 2007, 12:20 p.m.: 20071003-IR-312070023FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA; filed Nov 12, 2009, 3:53 p.m.: 20091209-IR-312090060FRA)

LSA Document #09-44(F)

(Administrative Cause Number 08-189D)

Filed with the Publisher: November 3, 2009, 3:34 p.m.

Small Business Regulatory Coordinator

Linnea Petercheff, Staff Specialist, Division of Fish and Wildlife, Department of Natural Resources, 402 W. Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-6527, lpetercheff@dnr.in.gov

Document History

LSA Document #09-44(F)

Notice of Intent: 20090121-IR-312090044NIA

Proposed Rule: 20090722-IR-312090044PRA

Hearing Held: August 13, 2009

Approved by Attorney General: October 22, 2009

Approved by Governor: November 3, 2009

Filed with Publisher: November 3, 2009, 3:34 p.m.

Documents Incorporated by Reference: None Received by Publisher

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On November 6, 2009, the Small Business Regulatory Coordinator, Linnea Petercheff, filed the following:

The number of comments, complaints, and questions received by the you from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

None are known to be from small businesses. However, three (3) comments and one (1) question could be from individuals who own small businesses. These comments related to the use of short-barreled rifles and crossbows for deer hunting, as well as allowing archery equipment and firearms to be loaded, or capable of being loaded, before and after lawful shooting hours.

The number of complaints or questions reported under subsection (1) that were resolved to the satisfaction of the agency and the small businesses involved; and

Two comments and one question were resolved to the satisfaction of the DNR and businesses involved. Short-barreled rifles are still legal, just under the handgun provisions, and the change allowing archery equipment and firearms to be loaded, or capable of being loaded, before and after lawful shooting hours was also approved. The other comment governing the use of crossbows was outside the scope of this rule package and, therefore, could not be made at that time.

Estimated time spent carrying out your duties as SBRC during the most recent state fiscal year, categorized by LSA Document numbers involved.

Two (2) hours.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #09-44(F) at its September 22, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated August 19, 2009:

...

Jack Corpuz, Indianapolis, Indiana

Mr. Corpuz stated that he is in favor of the amendments across the board.

b) Comments Received Outside Public Hearing

The following written comments were received from members of the public outside of the public hearing held on August 13, 2009.

Mark Fink, Hendricks County, Indiana (email: January 29, 2009)

I fully support the changes as stated, especially the change to 312 IAC 9-3-3.

Jack Corpuz, Indianapolis, Indiana (email: January 29, 2009)

Fully support this rule upgrade

Clarence H. Williams, Warrick County, Indiana (email: January 30, 2009)

Good job on the clarification. This is something that has been needed for quite awhile.

I approve of all changes, but would like to see a couple more changes:

1) Eliminate the sunset provision on the late season crossbow buck. I was heavily involved when this was originally discussed and I was assured (I still have the DNR emails) at that time that original sunset (two years ago) was not tied in with the OBR sunset. The last Administrative Rules Process that sunset was put into place again right along with the OBR sunset. I would like to sit down with the NRC and explain this and see that this sunset is dropped. There is no reason why cross bowers can not take a buck in the late season as everyone else can.

2) As a long time bow hunter I would like to see crossbows treated as the archery equipment that they are and allow cross bowers to hunt in all seasons where the vertical archery equipment is allowed. Crossbows are proven to be great recruitment and hunter retention tools. At the time of dwindling hunter numbers and increasing a deer herd population crossbows will be of a great benefit to the state of Indiana.

Williams also wrote by email on March 27, 2009

Looks good. Thanks for the "housekeeping".

Paul Vice, Seymour, Indiana (email: January 30, 2009)

I believe ALL military/refuge deer hunting opportunities in Indiana should be timed concurrently with Indiana general deer hunting seasons. I bow hunt near Big Oaks NWR. The last two weekends of archery season sound like a war zone. By opening their firearms hunts during Indiana's early archery season, Big Oaks is taking opportunity from Indiana bow hunters...and disrupting the peaceful archery experience of neighboring bow hunters. Indiana has six weeks of firearms season...which is a lot compared to most Midwestern states. Big Oaks could and should run their fire arm hunts on concurrent firearms weekends. Your proposal will allow Big Oaks to start gun hunting on October 1st. Please reconsider.

Bryan Smith, Greene County, Indiana (email: February 4, 2009)

I feel the rule changes didn't go far enough and the following rule changes should be considered:

[1]The requirement that a person buy a separate license for each deer season is proving to be too costly for some young households and is causing irretrievable damage to the sport of deer hunting in the state. With the short season it is difficult for hunters with small children and a busy lifestyle to justify buying a "firearm" or "muzzleloader" license only to be able to hunt one maybe two times, especially coupled with the high cost. These would be hunters aren't purchasing licenses or hunting which will hurt everyone

involved in the long run. If the state wishes to abolish hunting over the long run this is certainly one way accomplish that goal.

[2]It is a shame that rifle hunters in Indiana can't use classic midrange deer rounds such as 30/30 Winchester, .35 Remington or the 45/70. Personally I find it asinine that a person can crawl into a tree stand with a 30.06 pistol with a potential lethal range of 5-700 yards or farther but we can't use a rifle with the potential lethal range of 300 yards. The rifle allows the person another point of contact {the shoulder} the pistol doesn't provide for which makes it safer and easier to control. Presently I travel to Georgia at least once a year to hunt with a .35 Remington and this is money that otherwise would have been spent here in the state. I feel the rule should be changed to allow any rifle with a bullet diameter larger than .357 and a certain exception for the 30/30 Winchester.

Greg Eley, Grant County, Indiana (email: February 11, 2009)

In favor of making Warsaw urban deer zone. I hunt in Warsaw area and this is desperately needed, as it is now you have to be a member of good old boys club to get permission to hunt in city limits.

Todd Adrian Wininger, Fort Wayne, Indiana (email: February 16, 2009)

I support the revisions detailed in LSA #09-44.

Charles David Krieger, Warsaw, Indiana (email: February 21, 2009)

I support having Warsaw designated as a urban deer zone. In the past the city hunt has been ran as a "good buddy hunt". The local individuals that were selected to hunt arguing over who would get the trophy deer. I was never interested in being involved in the "city hunt". The "city hunt" was a national embarrassment to the State of Indiana. The urban deer zone is the correct way to help regulate the deer population. It would also be helpful to raise the number of bonus antlerless deer bag permits. My brother lives in Scott County which has a 8 quota for bonus antlerless deer permits. Kosciusko County has excellent deer habitat. The city of Warsaw is surrounded by lakes, farm crops, woods and food plots.

Kurt Barhydt, South Bend, Indiana (email: March 3, 2009)

The rule change to allow youth hunters to purchase an apprentice license without a hunter's education class or permit should not be allowed. Youth hunters need to take the hunters Ed class first! All other proposed rule changes I support.

Mark Fink, Pittsboro, IN (email: July 16, 2009)

I support this group of changes; it is just common sense items to me. I especially appreciate the change to allow loaded firearms before & after legal hunting hours. This one rule, as it has been worded in the past, is probably violated more than most rules and not because someone purposefully does so but merely because it slips their mind. Thanks again for these changes.

Tom G. Leek, Indianapolis, IN (email: July 20, 2009)

I think the change to allow a loaded firearm before and after legal shooting hours make perfect sense. You are not allowed to shoot before or after legal hours but you will want to be ready to shoot at the first second it is legal in the morning. You also will not be afraid of a DNR officer waiting for you to come out of a tree with a loaded firearm after legal hours.

Leslie A Conrad, Marion, IN (email: July 20, 2009)

"Allows archery equipment and firearms to be loaded, or capable of being fired, before and after lawful shooting hours" – This is a bad idea, someone is going to be accidentally shot during non legal hours if this amendment is passed.

Rodlee Lancaster, Hamilton County, IN (email: July 20, 2009)

I would like to comment on the ability to load and fire a firearm or bow outside of the legal hunting period and the mandatory requirement of hunter's safety courses.

First, as an avid hunter that has taken game at dusk and tracking it in the dark, the only reason why I would entertain the thought of having a weapon ready to be discharged is for self protection. Mostly due to the

possibility of coyotes or wild dogs being present on the same hunting ground. I don't see any other reason why a hunter would need to carry a loaded bow or gun outside the legal hunting period.

I feel that no hunting firearm or bow should NOT be loaded and fired outside the legal shooting time. It leaves too big of a loophole to take legal game outside of the official hunting time period. Not all hunters abide by ethical hunting rules and would eventually hurt the image of those who do. Understanding that having a loaded firearm outside of the legal time period is rational, the state has provided reasonable provisions to protect ones self by obtaining a personal firearm for protection. That is the one reason why I have obtained a personal firearms permit so that I would be prepared in the event that I would have to engage the dogs in the act of self preservation. I have yet to do so but have on occasion come face to face with them and sometimes it results in me letting them feed on the game I hunted, as I was not in personal danger. Although upset and tempted to kill the offending animal(s) I let them do what dogs do despite the patience and man hours had I put into the hunt, it's just not a justified reason for me to discharge my weapon.

To this regard, hunter safety courses should be made mandatory so that ethical hunting practices can be introduced and enforced, provided that the education course is updated to include the time restrictions and make it a mandatory question in order to pass the course. It closes the un-informed personal perspective of the "I didn't know..." syndrome and makes the hunter more conscious of the laws governing the hunt. It would make enforcing the law much easier for our DNR agents and promote a healthier public image for us hunters that abide by the rules and hunt ethically.

William S. Hayes, Clay, IN (email: July 20, 2009)

I appreciate the efforts being put in to improve the deer herd in Indiana. The buck to doe ratio is getting closer to 50/50. Seeing more bucks getting to the 2.5 age and older. Keep up the good work, and all proposals that are on the table I am in favor of. Thank you for letting the hunter be heard.

Ray Squibb, Starke, IN (email: July 20, 2009)

I am in favor of any of the proposals which increase the deer harvest. Traveling in Starke, Marshall and Pulaski counties, I have had several "near misses with deer, with my car; and have had one collision.

Randy Hazen, Plymouth, IN (email: July 20, 2009)

Agree with change

Brian Allison, Anderson, IN (email: July 20, 2009)

I agree with the proposed rule changes to allow the carrying/possession of both archery and firearms during the firearms and muzzle loading season. Such a rule change would be very beneficial for the taking of does one curtail DNR properties during firearm season when currently only one type of weapon can be carried/possessed.

Susan M Graff, Lake, IN (email: July 21, 2009)

I wish they would ban hunting.

Donald Brian Kays, Morgan, IN www.huntfishindiana.com (email: July 21, 2009)

Comments: Allows archery equipment and firearms to be loaded, or capable of being fired, before and after lawful shooting hours. This proposed rule is excellent for the educated hunter due to the increased number of predators. This rule would make hunters feel more safe when entering the woods. Allows legal archery equipment and a firearm to be possessed during the firearms season, as long as the person possesses both an archery and a firearm license. Allows legal archery equipment and a muzzleloader to be possessed during the muzzleloader season, as long as the person possesses both an archery and a muzzleloader license. Clarifies licensing and tagging requirements to make sure the person who killed the deer puts his/her name on the tag and that the deer is recorded at the check station in the name of the person who killed the deer.

Russell D McCoy, La Porte, IN (email: July 25, 2009)

I simply agree with the proposed changes.

Richard Fites, Marshall, IN (email: July 26, 2009)

I don't believe the loaded weapon before or after shooting hours should be passed. What is the reason behind wanting a weapon loaded? Tome it's unsafe. On the rifle use for youth, I don't believe this should pass. That rifle is not a legal weapon during regular season so why allow it just for the youth season?

Gerald J. McClure, Shelby, IN (email: July 26, 2009)

Yes I think the youth hunting age should be raised to less than 18years old, and the youth hunter should be allowed to harvest a deer of either sex

Forrest Fleming, Palmyra, IN (email: July 29, 2009)

I oppose the rule change that would not allow hunters to use Short Barreled Rifles for deer hunting. An SBR is not a handgun despite the odd wording in Indiana's definition of a handgun. The rule that disallows rifles that have been converted to "handguns"-which can only be SBRs if legal-rules out a large number of people who wish to hunt with these types of weapons. I do not see the problem allowing SBRs so long as they are legally owned and the rifle cartridge meets the guidelines set forth by the DNR for legal use. It is Indiana's queer inclusion of SBRs as handguns that is causing the problem, not the use itself of SBRs in an of itself. All that would need to be done to allow SBRs using rifle cartridges as already established under DNR rules, is to specifically allow SBRs so long as they meet those cartridge requirements.

Brian Allison, Anderson, IN (email: July 20, 2009)

I agree with the proposed rule changes to allow the carrying/possession of both archery and firearms during the firearms and muzzleloading season. Such a rule change would be very beneficial for the taking of does one curtail DNR properties during firearm season when currently only one type of weapon can be carried/possessed.

James E. Schoelkopf, Plano, TX (email: August 6, 2009)

I lived in Indiana for 17 years and my boys still live there. I have returned to Indiana and paid the out of state fee for a Buck almost every year and that has been for the last 16 years. You talk about reducing the doe herd but you want an out of state hunter to pay the same for a second deer license for doe for \$150.00 after I buy a buck license. I think this is ridiculous. I would buy an extra doe license if it were \$25.00 or \$30.00 but I will never pay \$150.00 for the doe license just to put food in my freezer. My sons and I along with our other hunting friends we hunt with in Indiana think the out of state cost for a second doe license is way out of order. I really hope I hear back from you.

Jason Pearson, Borden, IN (email: August 8, 2009)

*If you have a license for archery and firearms, muzzleloader. You should be able to carry all weapons to use for hunting.

* For safety reasons, should not be able to have a cap on your muzzleloader, a shell in the shooting chamber or an arrow in the nock. I do not see a reason why a gun cannot be loaded as long as it is not in away to be fired, unless it is chambered into a shooting chamber.

***I know it is not on the agenda, but the following should be brought up and talked about at a forum for rule change.

1. Crossbows should be allowed during all archery. It will increase revenue for the state and also allow for more people to get involved in the sport.

2. Lifetime hunting and fishing license should be brought back. The cost of the license are making many of us to cut back, since they rise every year.

3. If you want to really reduce the number of the deer herd and help grow more trophy bucks, then make it even more easy to take does. The cost of a doe license to start at \$25 is too much, even if the 2nd and other ones are \$15. Many more doe tags would be bought and more does taken if all doe tags were \$10. This should apply to even out of state hunters. *Also I would like the Wisconsin rule of taking doe before you take a buck. But only if the doe tag was at a more reasonable price.

Rev. Dr. Gary L Hall, Blackford, IN (email: August 8, 2009)

i like the housekeeping rules to allow youth to hunt with more firearms that would help them harvest a deer and become more excited about hunting

Bradley K. Jenshak, Monroe, IN (email: August 11, 2009)

(Proposal 9-3-8) I do not support the proposal to allow firearm use on wildlife or military refuges during the month of October. October is reserved for archery as it a much more challenging way of taking deer and bow hunters do not need firearm season putting the deer herd into high alert and nocturnal habits. If the herd is too large other measures should be taken to manage it at acceptable levels.

Dave Jenkins, Bloomington, IN (email: August 12, 2009)

I do not want gun hunts to start 1 Oct on military reserves. I would like to leave it 1 Nov.

Stuart Grell, Fountain County, IN (email: August 14, 2009)

I agree with all of the proposed changes.

c) Response by the Department of Natural Resources

The Department of Natural Resources offered the following response to the public comments.

DNR Response

Equipment loaded outside shooting hours

The DNR believes that there is no longer a need to require archery equipment or firearms to be unloaded or incapable of being fired outside lawful hunting hours. When this requirement originated, the hunting hours for deer were only from sunrise to sunset. Since that time, the hunting hours have been expanded to ½ hour before sunrise to ½ hours after sunset, and deer hunters who are in the field prior to legal hunting hours need to be able to load their firearm without making any noise and without movement that would scare a deer away. The requirement that firearms be unloaded is inconsistent with rules for hunting all other species. Those who hunt wild turkeys, waterfowl, squirrels, cottontail rabbits, and furbearers can have their firearms loaded at any time of day. Furthermore, the DNR already allows a person to carry a handgun at any time of day, loaded or unloaded, during all of the deer seasons under a personal protection permit. Additionally, the restriction of not allowing a person to carry a firearm can also be considered a violation of a person's Second Amendment rights, making enforcement minimal. Some courts will not even take such a case. Lastly, the majority of deer hunting accidents do not take place as a result of shooting outside the hunting hours; the accidents take place primarily when hunters climb in and out of tree blinds or climb over fences.

Military areas and other federal properties

The DNR has been asked by property managers of federal properties such as Camp Atterbury Joint Maneuver Training Center and Big Oaks National Wildlife Refuge to be able to allow deer hunting with a firearm on their properties prior to November 1. These property managers, among others, need the maximum flexibility to manage the deer herd on their property with the most efficient methods available. Furthermore, military areas may need to coordinate hunting opportunities and military training. Therefore, the DNR believes that these federal properties should have the ability to have a firearms season or youth hunting season (that includes firearms) prior to the current starting date of November 1 to more effectively manage the deer population on their property.

Hunter Education

The changes in 312 IAC 9-12 simply comply with state law by making it legal for a license retailer to issue an apprentice license to a person who has met the requirements in state statute for an apprentice hunting license. In 2008, the Indiana General Assembly passed legislation to allow the issuance of an apprentice hunting license to an individual who is hunting with an individual who is at least 18 years of age, is in close proximity to the apprentice hunter and properly licensed (unless exempt). Furthermore, an individual can purchase no more than 3 apprentice hunting license in his/her lifetime. Because state statute in IC 14-22-12-1.7 authorizes the DNR to issue apprentice hunting licenses to individuals who have not had hunter education, these rule changes are needed to comply with state law.

Youth Season

The rifles that are authorized in this rule package for youth hunters in 312 IAC 9-3-3(a) during the youth deer season are the same as authorized for all other deer hunters during the regular deer firearms season in 312 IAC 9-3-3(d). They are exactly the same requirements.

The age of youth hunters that can participate in the youth deer hunting season is being increased to those under the age of 18, instead of 16, in order to be consistent with state statute in IC 14-22-12-1. The resident youth consolidated hunting license and the nonresident youth hunting licenses authorized in IC 14-22-12-1 are available for youth under the age of 18 at the time the youth purchases the license.

Furthermore, youth hunters under the age of 18 can also participate in the free youth hunting days authorized in IC 14-22-11-18, and youth under the age of 18 are also now exempt from needing a fishing license to fish in public waters per IC 14-22-11-8.

Short-barreled rifles

The proposed rule change governing handguns makes it clear that a short-barreled rifle can only be used to fire a rifle cartridge that meets the specifications in the rule for rifles. A short-barreled rifle must fire a cartridge that meets the rifle cartridge requirements, not the handgun requirements. Even with this rule change, a short-barreled rifle can still be used during the deer firearms season in accordance with federal law with a cartridge that has a bullet at least .357 inches in diameter, has a minimum case length of 1.16 inches, and a maximum case length of 1.625 inches. The DNR considers a short-barreled rifle to be a rifle, as defined by federal law, not a handgun.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #09-44(F)

DIGEST

Amends 312 IAC 9-3-2, concerning general requirements and licenses for hunting deer, to reorder language for improved clarity, simplicity, and continuity. Amends 312 IAC 9-3-3 by adding rifles with certain cartridges for the youth special deer season and authorizing firearms and archery equipment to be capable of being loaded or fired outside lawful shooting hours. Amends 312 IAC 9-3-4 by adding Warsaw as a designated urban deer zone and for statutory consistency corrects the youth age from less than 16 years of age to less than 18 years of age. Amends 312 IAC 9-3-8 to allow hunting on military reserves and national wildlife refuges to begin on October 1 instead of November 1 and to allow the taking of deer with firearms. Amends 312 IAC 9-3-9 to add district wildlife biologists, property managers, and assistant property managers as individuals authorized to issue free permits to possess a deer killed by other means, such as a collision. Amends 312 IAC 9-12-2 and 312 IAC 9-12-3 to address hunter education requirements with respect to individuals purchasing apprentice hunting licenses authorized by IC 14-22-12-1.7. Repeals 312 IAC 9-3-2.5, 312 IAC 9-3-5, 312 IAC 9-3-6, and 312 IAC 9-3-7. Effective 30 days after filing with the Publisher.

312 IAC 9-3-2; 312 IAC 9-3-2.5; 312 IAC 9-3-3; 312 IAC 9-3-4; 312 IAC 9-3-5; 312 IAC 9-3-6; 312 IAC 9-3-7; 312 IAC 9-3-8; 312 IAC 9-3-9; 312 IAC 9-12-2; 312 IAC 9-12-3

SECTION 1. 312 IAC 9-3-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-2 General requirements and licenses for hunting deer

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22; IC 35-47-2

Sec. 2. (a) This section and sections 3 through 10 of this rule govern the:

- (1) hunting;
- (2) transportation; and
- (3) disposal;
of deer.

(b) Species of deer other than white-tailed deer (*Odocoileus virginianus*) are exempted from the following:

- (1) This section.
- (2) Sections 3 through 9 of this rule.

A ~~person~~ **An individual** who claims the exemption provided under this subsection must prove the deer is other than a white-tailed deer.

(c) The licenses identified by ~~sections 3 through 8 of in this rule section~~ are nonexclusive. An individual may apply for one (1) or more of these licenses.

~~(d) Before September 1, 2012, a person must not take more than one (1) antlered deer during the seasons for an annual deer license.~~

~~(e) The use or aid of:~~

- ~~(1) a food product that is transported and placed for consumption;~~
- ~~(2) salt;~~
- ~~(3) mineral blocks;~~
- ~~(4) prepared solid or liquid intended for ingestion (herein called bait);~~

- (5) snares;
- (6) dogs; or
- (7) other domesticated animals;

to take deer is prohibited. A person must not hunt by the aid of bait or on or over a baited area. An area is considered baited for ten (10) days after the removal of the bait or the baited soil. Hunting an orchard or another area, which may be attractive to deer as the result of normal agricultural activity, is not prohibited. The use of manufactured scents and lures or similar chemical or natural attractants is not prohibited.

(f) ~~The hunting of white-tailed deer possessed under the authority of a game breeder license under 312 IAC 9-10-4 is prohibited.~~

(g) ~~(d)~~ Except as provided under IC 14-22-11-1 and IC 14-22-11-11, ~~a person~~ **an individual** must not hunt deer:

- (1) deer unless the ~~person~~ **individual** possesses a completed and signed license **authorized under this section** bearing the ~~person's~~ **individual's** name; or
- (2) with a deer license issued to another ~~person~~ **individual**.

(h) A piece of paper must, immediately upon taking a deer, state the following:

- (1) The name and address of the person.
- (2) The license number (if applicable).
- (3) The sex of the deer.
- (4) The month and day the deer was taken.

A deer leg must be tagged with the piece of paper before leaving the field. A deer that is in the field is not required to be tagged if the person who takes the deer maintains immediate custody of, and constant visual contact with, the deer carcass.

(e) A youth hunter may take a deer during the youth deer season established in section 4(b) of this rule only if:

- (1) issued a license to hunt deer with:
 - (A) a resident youth consolidated hunting license under IC 14-22-11-10(b) or IC 14-22-12-1(a)(24);
 - (B) a lifetime comprehensive hunting license under IC 14-22-12-7(a)(4);
 - (C) a lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5); or
 - (D) an apprentice resident youth consolidated hunting license under IC 14-22-12-1.7; or
- (2) hunting deer without a license under IC 14-22-11-1 and 312 IAC 9-2-14.

(f) An individual may take a deer with a bow and arrow during the archery season established in section 4(e) of this rule only if:

- (1) issued a license to hunt deer by bow and arrows with:
 - (A) a resident deer archery license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(14);
 - (B) a nonresident deer archery license under IC 14-22-12-1(a)(17);
 - (C) a youth consolidated hunting license under IC 14-22-11-10(b) or IC 14-22-12-1(a)(24);
 - (D) a lifetime comprehensive hunting license under IC 14-22-12-7(a)(4);
 - (E) a lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5); or
 - (F) an apprentice license of the types identified in clauses (A) through (C) under IC 14-22-12-1.7; or
- (2) hunting without a license under IC 14-22-11-1 and 312 IAC 9-2-14.

(g) An individual may take a deer with a firearm during the firearms season established in section 4(h) of this rule only if:

- (1) issued a license to hunt deer by firearms with:
 - (A) a resident deer firearms license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(12);
 - (B) a nonresident deer firearms license under IC 14-22-12-1(a)(15);
 - (C) a resident youth consolidated hunting license under IC 14-22-11-10(b) or IC 14-22-12-1(a)(24);
 - (D) a lifetime comprehensive hunting license under IC 14-22-12-7(a)(4);
 - (E) a lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5); or
 - (F) an apprentice license of the types identified in clauses (A) through (C) under IC 14-22-12-1; or
- (2) hunting deer without a license under IC 14-22-11-1 and 312 IAC 9-2-14.

(h) An individual may take a deer with a muzzleloader during the muzzleloader season established in section 4(i) of this rule only if:

(1) issued a license to hunt deer by a muzzleloader with:

- (A) a resident deer muzzleloader license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(13);
 - (B) a nonresident deer muzzleloader license under IC 14-22-12-1(a)(16);
 - (C) a resident youth consolidated hunting license under IC 14-22-11-10(b) or IC 14-22-12-1(a)(24);
 - (D) a lifetime comprehensive hunting license under IC 14-22-12-7(a)(4);
 - (E) a lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5); or
 - (F) an apprentice license of the types identified in clauses (A) through (C) under IC 14-22-12-1; or
- (2) hunting deer without a license under IC 14-22-11-1 and 312 IAC 9-2-14.

(i) An individual may take a deer during the urban deer season established in section 4(f) of this rule only if:

(1) issued a license to hunt deer with:

- (A) a resident deer archery license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(14);
 - (B) a nonresident deer archery license under IC 14-22-12-1(a)(17);
 - (C) a resident extra deer license under IC 14-22-12-1(a)(18);
 - (D) a nonresident extra deer license under IC 14-22-12-1(a)(19);
 - (E) a resident youth consolidated hunting license under IC 14-22-11-10(b) or IC 14-22-12-1(a)(24);
 - (F) an apprentice license of the types identified in clauses (A) through (E) under IC 14-22-12-1;
 - (G) a lifetime comprehensive hunting license under IC 14-22-12-7(a)(4); or
 - (H) a lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5); or
- (2) hunting deer without a license under IC 14-22-11-1 and 312 IAC 9-2-14.

(j) An individual may take an antlerless deer in a designated county, by authority of an extra deer bonus antlerless license, only as authorized under section 4(j) of this rule.

(k) An individual must, immediately upon taking a deer, attach a piece of paper to the deer that states the following:

- (1) The name and address of the individual who took the deer.
- (2) The license number (if applicable) of the individual who took the deer.
- (3) The sex of the deer.
- (4) The month and day the deer was taken.

A deer must be tagged with the piece of paper before leaving the field. A deer that is in the field is not required to be tagged if the individual who takes the deer maintains immediate custody of, and constant visual contact with, the deer carcass.

~~(i) A person~~ **(l) An individual** who takes a deer must cause delivery of the deer carcass to an official checking station for registration in the name of the individual who took the deer on the occurrence of the earlier of the following:

- (1) Within forty-eight (48) hours of the taking of the deer.
- (2) Before the deer is removed from this state.

The ~~person~~ **individual** who delivers the deer carcass to an official checking station for registration must provide true and accurate information for the check station logs, including the name and license number of the individual who took the deer and the date the deer was taken.

~~(j) After the checking station operator records the permanent seal number on the log and collects the piece of paper described in subsection (h), the operator shall give the seal to the person. The person must immediately affix the seal:~~

- ~~(1) between a tendon and bone;~~
- ~~(2) through a section of skin or flesh; or~~
- ~~(3) around a branched antler;~~

~~to prevent its removal (without cutting the seal or the body part to which it is affixed). The seal must be maintained until processing of the deer begins.~~

- (k) The checking station operator must do the following:
- (1) Accurately and legibly complete all forms provided by the department.
 - (2) Make those forms available to department personnel upon request.

(l) A person must not erect, place, or hunt from a permanent tree blind on state-owned lands. A tree blind placed on:

- (1) state-owned or state-leased lands;
- (2) U.S. Forest Service lands;
- (3) the Muscatatuck National Wildlife Refuge; or
- (4) the Big Oaks National Wildlife Refuge;

must be portable and may be left overnight only between September 1 and January 10. A fastener used in conjunction with a tree blind and a tree or pole climber that penetrates a tree more than one-half (1/2) inch is prohibited. Each portable tree blind must be legibly marked with the name, address, and telephone number of the owner of the tree blind.

(m) The head of a deer must remain attached to the carcass until the tag is attached and locked at the deer checking station.

(n) The use of infrared sensors to locate or take deer is prohibited. A person must not hunt or retrieve deer with the aid of an infrared detector.

(n) After the checking station operator records the permanent seal number on the log and collects the piece of paper described in subsection (k), the operator shall give the seal to the individual. The individual must immediately affix the seal:

- (1) between a tendon and bone;
- (2) through a section of skin or flesh; or
- (3) around a branched antler;

to prevent its removal (without cutting the seal or the body part to which it is affixed). The seal must be maintained until processing of the deer begins.

- (o) The checking station operator must do the following:
- (1) Accurately and legibly complete all forms provided by the department.
 - (2) Make those forms available to department personnel upon request.

(p) An individual must not hunt deer except from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset.

(q) An individual must not hunt deer unless that individual wears hunter orange. However, this subsection does not apply:

- (1) before the commencement of the firearms season set forth in section 4(e) of this rule; and
- (2) after the muzzleloading gun season set forth in section 4(f) of this rule.

(r) Before September 1, 2012, an individual must not take more than one (1) antlered deer during the seasons for an annual deer license.

(s) An individual must not hunt deer with the use or aid of:

- (1) bait, which includes:
 - (A) a food that is transported and placed for consumption, including, but not limited to, piles of corn and apples placed in the field;
 - (B) a prepared solid or liquid that is manufactured and intended for consumption by livestock or wild deer, including, but not limited to, commercial baits and food supplements;
 - (C) salt; or
 - (D) mineral supplements;
- (2) snares;
- (3) dogs; or
- (4) other domesticated animals.

The use of manufactured scents and lures or similar chemical or natural attractants is not prohibited.

(t) An area is considered baited for ten (10) days after the removal of the bait or the baited soil. Hunting an area, such as an orchard, which may be attractive to deer as the result of normal agricultural activity, is not prohibited.

(~~e~~) (u) Notwithstanding subsection (~~e~~), (s), an individual may use dogs ~~may be used~~ only while on a leash to track or trail wounded deer.

(~~p~~) (v) Notwithstanding subsection (~~e~~), (s), an individual may use:

- (1) donkeys;
- (2) mules; and
- (3) horses;

~~may be used~~ for transportation to and from a hunt but ~~may not be used~~ while hunting.

(~~q~~) The possession of an electronic deer call is prohibited. A person must not hunt deer with the aid of an electronic deer call.

(w) An individual must not hunt white-tailed deer possessed under the authority of a game breeder license under 312 IAC 9-10-4.

(x) An individual may possess a handgun in accordance with IC 35-47 while hunting deer if the individual:

- (1) has a valid unlimited license to carry a handgun issued under IC 35-47-2-3;
- (2) has a valid unlimited license to carry a handgun recognized under IC 35-47-2-21(b); or
- (3) is not required to possess a license to carry a handgun under IC 35-47-2-2.

(Natural Resources Commission; 312 IAC 9-3-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2702; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1528; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 536; filed May 12, 2006, 10:38 a.m.: 29 IR 3344; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; errata filed Jul 21, 2006, 1:56 p.m.: 20060802-IR-312050214ACA; filed Jul 10, 2007, 2:09 p.m.: 20070808-IR-312060572FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA)

SECTION 2. 312 IAC 9-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-3 Equipment for deer hunting

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-11-10; IC 14-22-12-1; IC 14-22-12-7; IC 35-47-2

Sec. 3. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is:

(1) issued a license to hunt deer by:

(A) firearms under IC 14-22-12-1(a)(12) or IC 14-22-12-1(a)(15) during the season established in subsection (b); or

(B) a muzzleloading gun or muzzleloading handgun under IC 14-22-12-1(a)(13) or IC 14-22-12-1(a)(16) during the season established in subsection (c);

(2) issued a:

(A) lifetime license under IC 14-22-12-7(a)(4) or IC 14-22-12-7(a)(5) before July 1, 2005, during the seasons established in subsections (b) and (c); or

(B) youth yearly consolidated hunting license under IC 14-22-11-10(b) or IC 14-22-12-1(a)(24); or

(3) hunting by the use of firearms under IC 14-22-11-1.

(b) The season for hunting deer with firearms is as follows:

(1) The firearms season using:

(A) shotgun;

(B) shotgun with rifled barrel;

(C) handgun;

(D) muzzleloading gun;

(E) muzzleloading handgun; or

(F) rifle, with the use of cartridges described in subsection (f)(4) only;

is from the first Saturday after November 11 and continues for an additional fifteen (15) days.

(2) The seasonal limit for hunting deer under this subsection is one (1) antlered deer.

(c) In addition to the season established under subsection (b), the season for using a muzzleloading gun or muzzleloading handgun only:

(1) extends from the first Saturday after the firearms season established under subsection (b); and

(2) continues for fifteen (15) additional days.

The seasonal limit for hunting deer under this extended season is one (1) deer of either sex.

(d) A person must not hunt deer except from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset.

(e) A person must not do the following:

(1) Hunt deer unless that person wears hunter orange.

(2) Possess bow and arrows while hunting under this section.

(a) During the youth special deer season established in section 4(b) of this rule, a youth hunter must hunt deer only with the following equipment:

(1) A bow and arrow as described in subsection (b)(1) through (b)(5).

(2) A crossbow as described in subsection (b)(6) and (b)(7).

(3) A shotgun as described in subsection (d)(1).

(4) A muzzleloading long gun as described in subsection (d)(3).

(5) A rifle, with the use of cartridges described in subsection (d)(4).

(b) During the archery season established in section 4(c) of this rule, an individual must hunt deer only with the following equipment:

(1) A long bow or compound bow that has at least thirty-five (35) pounds pull.

(2) Arrows that are equipped with metal or metal-edged (or flint, chert, or obsidian napped) broadheads.

(3) Poisoned or explosive arrows are unlawful.

(4) Bows drawn, held, or released other than by hand or hand-held releases are unlawful.

(5) No portion of the bow's riser (handle) or any:

(A) track;

(B) trough;

(C) channel;

(D) arrow rest; or

(E) other device;

that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

(6) In addition to the equipment described in subdivisions (1) through (5), during the late archery season established in section 4(c)(2) of this rule, an individual may use a crossbow that has either of the following:

(A) At least one hundred twenty-five (125) pounds pull.

(B) A mechanical safety.

(7) As used in this section, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device.

~~(f) A person~~ (c) During the firearms season established in section 4(e) of this rule, an individual must not hunt deer only with a firearm under this section except as follows: any of the following equipment:

- (1) A shotgun.
- (2) A shotgun with rifled barrel.
- (3) A handgun.
- (4) A muzzleloading long gun.
- (5) A muzzleloading handgun.
- (6) A rifle, with the use of cartridges described in subsection (d)(4) only.
- (7) A bow and arrows described in subsection (b)(1) through (b)(5).

(d) As used in section 2 of this rule, this section, and sections 4 through 8 of this rule, a firearm must meet the following specifications:

(1) A shotgun ~~(A) must have a gauge 10, 12, 16, 20, or .410 bore loaded with a single projectile. and (B) may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine.~~

(2) A handgun must:

(A) conform to the requirements of IC 35-47-2;

(B) have a barrel at least four (4) inches long; and

(C) fire a bullet of two hundred forty-three thousandths (.243) inch diameter or larger; and

(D) not be a rifle that has a barrel less than eighteen (18) inches or is designed or redesigned to be fired from the shoulder.

~~All 38 special ammunition is prohibited.~~ The handgun cartridge case, without bullet, must be at least one and sixteen-hundredths (1.16) inches long. Full metal jacketed bullets are unlawful. All 25/20, 32/20, 30 carbine, and 38 special ammunition is prohibited.

(3) A muzzleloading long gun must be .44 caliber or larger, loaded with a bullet at least three hundred fifty-seven thousandths (.357) inch or larger. A muzzleloading handgun must be single shot, .50 caliber or larger, loaded with bullets at least .44 caliber and have a barrel at least twelve (12) inches long. The length of a muzzleloading handgun barrel is determined by measuring from the base of the breech plug, excluding tangs and other projections, to the end of the barrel, including the muzzle crown. A muzzleloading gun must be capable of being loaded only from the muzzle, including both powder and bullet. ~~A muzzleloading gun may be possessed in the field outside lawful shooting hours only if:~~

~~(A) for percussion firearms, the cap or primer is removed from the nipple or primer adapter; or~~

~~(B) for flintlock firearms, the pan is not primed.~~

(4) A rifle must fire a cartridge that meets the following specifications:

(A) Fire a bullet of three hundred fifty-seven thousandths (.357) of an inch diameter or larger.

(B) Have a minimum case length of one and sixteen-hundredths (1.16) inches. and

(C) Have a maximum case length of one and six hundred twenty-five thousandths (1.625) inches.

(5) Over-and-under combination rifle-shotguns are prohibited.

~~(6) Notwithstanding subsection (f)(2), a person may possess a handgun in accordance with IC 35-47 while hunting deer under this section if the person:~~

~~(A) has a valid unlimited license to carry a handgun issued under IC 35-47-2-3;~~

~~(B) has a valid unlimited license to carry a handgun recognized under IC 35-47-2-21(b); or~~

~~(C) is not required to possess a license to carry a handgun under IC 35-47-2-2.~~

(e) During the muzzleloader season established in section 4(f) of this rule, an individual must hunt deer only with a:

(1) muzzleloading long gun as described in subsection (d)(3);

(2) muzzleloading handgun as described in subsection (d)(3); or

(3) bow and arrows as described in subsection (b)(1) through (b)(7).

(f) During the urban deer season established in section 4(d) of this rule, an individual must hunt deer only with bows and arrows described in section 4(b)(1) through 4(b)(5) of this rule during the early archery season established in section 4(c)(1) of this rule. During the urban deer season established in section 4(d) of this rule, an individual must hunt deer only with bows and arrows,

including crossbows, described in subsection (b)(1) through (b)(7) during the late archery season described in subsection (c)(2).

(g) An individual must not erect, place, or hunt from a permanent tree blind on state owned lands. A tree blind placed on:

- (1) state owned or state leased lands;
- (2) U.S. Forest Service lands; or
- (3) any national wildlife refuge;

must be portable and may be left overnight only between September 1 and January 10. A fastener used in conjunction with a tree blind and a tree or pole climber that penetrates a tree more than one-half (1/2) inch is prohibited. Each portable tree blind must be legibly marked with the name, address, and telephone number of the owner of the tree blind.

(h) An individual must not use infrared sensors to locate or take deer. An individual must not hunt or retrieve deer with the aid of an infrared detector.

(i) An individual must not possess or use an electronic deer call while hunting deer.

(Natural Resources Commission; 312 IAC 9-3-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 538; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; filed Jun 29, 2007, 2:30 p.m.: 20070725-IR-312060272FRA; filed Sep 6, 2007, 12:20 p.m.: 20071003-IR-312070023FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA)

SECTION 3. 312 IAC 9-3-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-4 Season dates and bag limits

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 4. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer by bow and arrows under:

- (A) IC 14-22-11-10(b);
- (B) IC 14-22-12-1(a)(14);
- (C) IC 14-22-12-1(a)(17);
- (D) IC 14-22-12-1(a)(24);
- (E) IC 14-22-12-7(a)(4); or
- (F) IC 14-22-12-7(a)(5);

and is supplemental to section 2 of this rule; or

(2) hunting by the use of bow and arrows under IC 14-22-11-1.

(b) The season for hunting deer by bow and arrows during the:

- (1) early bow season is from October 1 through the firearms season (set forth in section 3(b) of this rule); and
- (2) late bow season from the first Saturday after the firearms season through the first Sunday in January.

(c) The urban deer season is:

- (1) from September 15 through the firearms season (set forth in section 3(b) of this rule); and
- (2) during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(d) The seasonal limit for hunting under this section is one (1) deer of either sex. After August 31, 2012, a person must not take an antlered deer by means of a crossbow.

(e) A person must not hunt deer under this section as follows:

- (1) Except from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset.
- (2) Unless that person wears hunter orange. However, this subdivision does not apply:
 - (A) before the commencement of the firearms season set forth in section 3(b) of this rule; and
 - (B) after the muzzleloading gun season set forth in section 3(c) of this rule.
- (3) Unless that person possesses only one (1) bow. A person must not possess a firearm while hunting under this section.
- (4) Except as follows:
 - (A) No person shall use a long bow or compound bow of less than thirty-five (35) pounds pull.
 - (B) Arrows must be equipped with metal or metal edged (or flint, chert, or obsidian napped) broadheads.
 - (C) Poisoned or explosive arrows are unlawful.
 - (D) Bows drawn, held, or released other than by hand or hand held releases are unlawful.
 - (E) A long bow or compound bow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.
 - (F) No portion of the bow's riser (handle) or any:
 - (i) track;
 - (ii) trough;
 - (iii) channel;
 - (iv) arrow rest; or
 - (v) other device;that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

(f) Notwithstanding subsection (e)(4), a person may use a crossbow to take a deer of either sex during the late bow season from the first Saturday after the firearms season through the first Sunday in January if the following restrictions are met:

- (1) No person shall use a crossbow:
 - (A) of less than one hundred twenty-five (125) pounds pull; or
 - (B) that does not have a mechanical safety.
- (2) A crossbow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(g) As used in this rule, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device.

(h) Notwithstanding subsection (e)(3), a person may possess a handgun in accordance with IC 35-47 while hunting deer under this section if the person:

- (1) has a valid unlimited license to carry a handgun issued under IC 35-47-2-3;
- (2) has a valid unlimited license to carry a handgun recognized under IC 35-47-2-21(b); or
- (3) is not required to possess a license to carry a handgun under IC 35-47-2-2.

(a) An individual must not take more than one (1) deer with each deer license.

(b) The special youth deer season is two (2) consecutive days beginning on the Saturday immediately before October 1 or as approved annually by the director.

- (1) The seasonal limit for hunting deer under this subsection is one (1) antlerless deer.
- (2) As used in this section, "youth" means an individual who is less than eighteen (18) years of age by the date of the hunt.
- (3) A youth who hunts a deer under this subsection must be accompanied by an adult of at least eighteen (18) years of age who:
 - (A) does not possess a firearm, bow and arrow, or crossbow while in the field;
 - (B) possesses a valid hunting license of any type that is not an apprentice license;
 - (C) must not accompany more than two (2) youth hunters at any one (1) time; and
 - (D) must be in close proximity and able to communicate with the youth hunter at all times.

(c) The archery deer season is as follows:

- (1) Early archery season is from October 1 through the closing day of firearms season as established in subsection (e).
- (2) Late archery season from the first Saturday after the closing day of firearms season as established in subsection (e) through the first Sunday in January.
- (3) An individual must take not more than two (2) deer of which only one (1) may be antlered under this subsection.
- (4) After August 31, 2012, an individual must not take an antlered deer by means of a crossbow.

(d) The urban deer season is as follows:

- (1) From September 15 through the closing day of firearms season as established in subsection (e).
- (2) During the late archery season as established in subsection (c)(2).
- (3) An individual must take not more than four (4) deer of which only one (1) may be antlered under this subsection.
- (4) A deer taken under this subsection does not count against a bag limit for deer set elsewhere in this rule.
- (5) The following areas have been designated as urban deer zones subject to the urban deer season:
 - (A) The Indianapolis urban deer zone includes the following:
 - (i) All of Marion County.
 - (ii) That portion of Hendricks County east of State Highway 267.
 - (iii) The southeast portion of Boone County as bounded by the following:
 - (AA) State Highway 267.
 - (BB) Interstate Highway 65.
 - (CC) State Highway 32.
 - (iv) That portion of Hamilton County south of State Highway 32.
 - (B) The Fort Wayne urban deer zone includes that portion of Allen County lying within the bounds of Interstate Highway 69 and State Highway 469.
 - (C) The Evansville urban deer zone includes all of Vanderburgh County.
 - (D) The Lafayette urban deer zone includes the portion of Tippecanoe County north of State Highway 28.
 - (E) The Gary urban deer zone includes that portion of Lake County north of U.S. Highway 30.
 - (F) The Crown Point urban deer zone includes that portion of Lake County within the corporate limits of Crown Point.
 - (G) The Chesterton urban deer zone includes the portion of Porter County north of U.S. Highway 94.
 - (H) The Michigan City urban deer zone includes that portion of LaPorte County north of U.S. Highway 94.
 - (I) The Warsaw urban deer zone includes the portion of Kosciusko County within the corporate limits of the city of Warsaw.

(e) The firearms deer season is from the first Saturday after November 11 and continues for an additional fifteen (15) days. An individual must take not more than one (1) antlered deer under this subsection.

(f) The deer hunting season for only using a muzzleloading long gun or muzzleloading handgun is from the first Saturday after the closing day of firearms season as established in subsection (e) and continues for an additional fifteen (15) days. An individual must not take more than one (1) deer of either sex under this subsection.

(g) The season and bag limit for hunting antlerless deer in a designated county, by authority of an extra deer bonus antlerless license, shall be established on an annual basis by a temporary rule authorized by the director.

(Natural Resources Commission; 312 IAC 9-3-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 5, 1997, 3:25 p.m.: 21 IR 930; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 538; filed May 25, 2005, 10:15 a.m.: 28 IR 2945; filed Jun 29, 2007, 2:30 p.m.: 20070725-IR-312060272FRA; filed Jul 10, 2007, 2:09 p.m.: 20070808-IR-

312060572FRA; filed Sep 6, 2007, 12:20 p.m.: 20071003-IR-312070023FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA)

SECTION 4. 312 IAC 9-3-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-8 Hunting deer on designated military reserves and national wildlife refuges with additional deer hunting licenses

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22-11-10; IC 14-22-12

Sec. 8. (a) This section governs the activities of an individual who is hunting deer on each of the following military reserves and **national** wildlife refuges.

- (1) ~~Naval Weapons Support Center Crane.~~
- (2) ~~Big Oaks National Wildlife Refuge.~~
- (3) ~~Atterbury Reserve Forces Training Area.~~
- (4) ~~Indiana Army Ammunition Plant (Charlestown).~~
- (5) ~~Newport Army Ammunition Plant.~~
- (6) ~~Muscatatuck National Wildlife Refuge.~~
- (7) ~~Leiber State Recreation Area (holders of handicap permits under 312 IAC 9-10-10 only).~~

(b) ~~The season for hunting~~ If selected by drawing or invitation, an individual may hunt deer under this section by firearms ~~is on a military reserve or national wildlife refuge as follows:~~

- (1) ~~By firearms from November 1 through December 31.~~
- (2) ~~By bow and arrows from October 1 through December 31.~~

The specific hunting dates and equipment will be determined annually by the department in conjunction with the management staff of the military reserve or national wildlife refuge.

(c) ~~The season for hunting deer under this section by bow and arrows is from October 1 through December 31.~~

(d) ~~Except as provided under subsections (b) through (c), a person who hunts by the authority of a firearms license issued under section 3 of this rule or bow and arrows license under section 4 or 5 of this rule is also subject to these sections:~~

(e) ~~An individual may enter a drawing to hunt deer on the military reserves or on Big Oaks National Wildlife Reserve or Muscatatuck National Wildlife Refuge. If selected in the drawing, that individual may apply for:~~

- (1) ~~an extra firearms military or refuge deer license;~~
 - (2) ~~an extra deer muzzle loader military or refuge license; or~~
 - (3) ~~an extra deer archery military or refuge license;~~
- ~~to hunt during the seasons established under subsections (b) through (c).~~

(c) An individual must use equipment authorized under section 3 of this rule to take a deer under this section.

(d) An individual may take a deer on a military reserve or national wildlife refuge only if issued one (1) of the following licenses:

- (1) A resident deer archery license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(14).
- (2) A nonresident deer archery license under IC 14-22-12-1(a)(17).
- (3) A resident deer firearms license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(12).
- (4) A nonresident deer firearms license under IC 14-22-12-1(a)(15).
- (5) A resident deer muzzleloader license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(13).
- (6) A nonresident deer muzzleloader license under IC 14-22-12-1(a)(16).

- (7) A resident extra deer license under IC 14-22-12-1(a)(18).
- (8) A nonresident extra deer license under IC 14-22-12-1(a)(19).
- (9) An apprentice license of the types identified in subdivisions (1) through (8) under IC 14-22-12-1.7.
- (10) A lifetime comprehensive hunting license under IC 14-22-12-7(a)(4).
- (11) A lifetime comprehensive hunting and fishing license under IC 14-22-12-7(a)(5).

(e) An individual must comply with the season dates and bag limit for deer hunting as established in section 4 of this rule if using one (1) of the following licenses to hunt on a military reserve or national wildlife refuge:

- (1) A resident deer archery license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(14).
- (2) A nonresident deer archery license under IC 14-22-12-1(a)(17).
- (3) A resident deer firearms license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(12).
- (4) A nonresident deer firearms license under IC 14-22-12-1(a)(15).
- (5) A resident deer muzzleloader license under IC 14-22-11-10(a) or IC 14-22-12-1(a)(13).
- (6) A nonresident deer muzzleloader license under IC 14-22-12-1(a)(16).
- (7) An apprentice license of the types identified in subdivisions (1) through (6) under IC 14-22-12-1.

(f) Except as provided in subsection (g), the seasonal bag limit for hunting under this section is ~~An individual may take one (1) deer of either sex for each extra deer military/refuge license whether that license is issued under subsection (d) or (e).~~ **on a military reserve or national wildlife refuge.** An antlered deer taken under this section is exempted from the limitations placed on the taking of antlered deer set forth in section 2 of this rule.

(g) In addition to the other licenses authorized by this section, the division may issue an extra deer **military/refuge** license under this subsection. This extra deer **military/refuge** license authorizes the taking by bow and arrows of a deer of either sex **only** from a site listed in subsection (a). ~~This subsection is governed by IC 14-22-12-1(18) and IC 14-22-12-1(19).~~ **military reserve or national wildlife refuge.**

(h) ~~An individual must comply with all of the provisions in section 2 of this rule which governs the use of tags, generally, also applies to extra deer tags under this section.~~ **with the exception of subsections (a), (b), and (e) through (j).**

(Natural Resources Commission; 312 IAC 9-3-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2705; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1532; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA)

SECTION 5. 312 IAC 9-3-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-9 Deer killed by other means; disposition

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 9. (a) If a deer dies following a collision with a motor vehicle:

- (1) a conservation officer;
 - (2) another law enforcement officer;
 - (3) **a district wildlife biologist for the department;** or
 - (4) a property manager or assistant property manager for the department;
- may issue a departmental permit to an individual to possess the carcass of the deer. ~~for not more than sixty (60) days.~~

(b) If a deer is found dead:

- (1) a conservation officer;
- (2) **a district wildlife biologist for the department;**
- (3) **a property manager or assistant property manager for the department;** or a person

- (4) **an individual** designated by the conservation officer;
may issue a departmental permit to possess the deer.

(Natural Resources Commission; 312 IAC 9-3-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA)

SECTION 6. 312 IAC 9-12-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-12-2 Mandatory hunter education for an individual born after December 31, 1986

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 2. (a) In addition to the requirements for obtaining a hunting license under IC 14-22-11, an individual born after December 31, 1986, must have successfully completed a course in hunter education by the department or the department's agent under IC 14-22-35-1 and this rule.

(b) As used in subsection (a), "department's agent" includes a person approved to administer a hunter education program in Indiana, as well as a program found by the director to provide hunter education substantially equivalent to an approved Indiana program in any of the following:

- (1) Another state.
- (2) A province of Canada.
- (3) Another country.

(c) **An individual born after December 31, 1986, is exempt from the requirements in subsection (a) if the individual:**

- (1) purchases an apprentice hunting license authorized under IC 14-22-12-1.7;**
- (2) otherwise complies with the requirements under this article; and**
- (3) is accompanied by an individual who is at least eighteen (18) years of age that either:**
 - (A) holds a valid hunting license of any type that is not an apprentice license; or**
 - (B) is not required to have a hunting license under IC 14-22-11 and 312 IAC 9-2-14.**

(Natural Resources Commission; 312 IAC 9-12-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2758; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA)

SECTION 7. 312 IAC 9-12-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-12-3 Demonstration of compliance with hunter education requirements

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 4-21.5; IC 14-22-11-3; IC 14-22-12-1.7

Sec. 3. (a) An agent duly appointed by the director under IC 14-22-11-3, or a clerk of a county circuit court, must not issue a hunting license to an individual subject to section 2 of this rule unless the individual:

- (1) demonstrates compliance with subsection (b) section 2 of this rule; or**
- (2) purchases an apprentice hunting license under IC 14-22-12-1.7.**

(b) An individual subject to section 2 of this rule may demonstrate successful completion of a hunter education program by any one (1) of the following methods:

- (1) The presentation of a certificate of completion that indicates a hunter education program offered by the department or the department's agent was successfully completed by the applicant. A certificate of completion shall be completed on a department form.
- (2) For ~~a person~~ **an individual** less than twelve (12) years of age upon completion of attendance at a hunter education course, the presentation of a certificate of attendance that indicates a hunter education program offered by the department or the department's agent has been monitored by the applicant. A license issued

under this subdivision authorizes an applicant to hunt only if the applicant is accompanied by a parent or guardian. A certificate of attendance shall be prepared on a department form.

(3) A statement made under oath or affirmation by the applicant, on a department form, stating the applicant successfully completed a hunter education program approved under section 2 of this rule.

(4) A properly completed hunting license issued previously to the applicant.

(5) A final order from the commission under IC 4-21.5 and 312 IAC 3 stating the applicant is entitled to receive a hunting license.

(Natural Resources Commission; 312 IAC 9-12-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2758; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Nov 3, 2009, 3:34 p.m.: 20091202-IR-312090044FRA)

SECTION 8. THE FOLLOWING ARE REPEALED: 312 IAC 9-3-2.5; 312 IAC 9-3-5; 312 IAC 9-3-6; 312 IAC 9-3-7.

LSA Document #08-886(F)

(Administrative Cause Number 08-163D)

Filed with the Publisher: August 28, 2009, 3:39 p.m.

Small Business Regulatory Coordinator

Linnea Petercheff, Staff Specialist, Division of Fish and Wildlife, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-6527, lpetercheff@dnr.in.gov

Document History

LSA Document #08-886(F)

Notice of Intent: 20081126-IR-312080886NIA

Proposed Rule: 20090415-IR-312080886PRA

Hearing Held: June 25, 2009

Approved by Attorney General: August 14, 2009

Approved by Governor: August 28, 2009

Filed with Publisher: August 28, 2009, 3:39 p.m.

Documents Incorporated by Reference: None Received by Publisher

SMALL BUSINESS REGULATORY COORDINATOR RECORD

On October 2, 2009, the Small Business Regulatory Coordinator, Linnea Petercheff, filed the following:

The number of comments, complaints, and questions received by the you from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

None.

The number of complaints or questions reported under subsection (1) that were resolved to the satisfaction of the agency and the small businesses involved; and

None

Estimated time spent carrying out your duties as SBRC during the most recent state fiscal year, categorized by LSA Document numbers involved.

Two (2) hours.

NATURAL RESOURCES COMMISSION MEETING

The Natural Resources gave final adoption to LSA Document #08-886(F) at its July 21, 2009 meeting. No public comments were received at this meeting.

Excerpt from Hearing Officer Report dated June 30, 2009:

...

b) Comments Received Outside Public Hearing

The following written comments were received from members of the public outside of the public hearings held on May 20, 2009 and June 25, 2009.

David F. Delaney, Marion County, Indiana (January 17, 2009)

The proposed rule on paddlefish is an outrage. Commercial fishing interests should never take priority over the average Indiana resident fisherman. Requiring a person to have commercial license to simply harvest a paddlefish is totally wrong. My tax dollars and fishing and hunting dollars to go promote and protect wildlife and fish and I should have a right to pursue those species with a regular Indiana fishing license. Actually, commercial fisherman licenses are ridiculously cheap here in Indiana and licenses should be priced at a level that equates to the income that is generated from the taking of our natural resources. This proposed rule is wrong!

David M Kowlon, Laporte County, Indiana (January 18, 2009)

If paddlefish are too endangered to allow sport fishing then why allow commercial fishing? I thought these fish belonged to "The State" and all the residents!! Why not have a catch and release season for sport fishing?

Gregory Scott Yazel, Indiana Striped Bass Association, Decatur County, Indiana (January 19, 2009)

The paddlefish is a sport fish for ALL fisherman to enjoy catching. If a paddlefish is caught legally by a properly licensed fisherman, it should be his/her choice as to whether he gets to keep the fish. Not some money hungry commercial fishing company!!!

Jack Corpuz, Pheasants Forever, Indianapolis (January 19, 2009)

Strongly support this initiative.

Jason McGowen, Responsible Indiana Sportsman, Mooresville, Indiana (January 17, 2009)

Are we going to continue to sell off our natural resources? Why is it acceptable for a commercial fisherman to take a paddlefish, only for the eggs, and not acceptable for anyone else? This is a "typical" proposal by this state's legislation and I'd personally like to know who wrote this up. I took the time to comment on this topic and I think it would befit for someone to reply back. My tax dollars and license fees (along w/ many others) are what writes your checks. I want a response on another proposal that takes our Indiana wildlife out of that average Hoosiers hands and puts it into someone's out to make a buck.

Joe Bacon, Marion, Indiana (January 17, 2009)

I can not believe that Fish & Wildlife and IDNR as a whole would support taking a fish away from license purchasing sportsmen and allowing only commercial interests to fish for it. Be it rod & reel or a gill net it is still "taking" of a resource and all Hoosiers should be allowed to partake. This is an insult to the recreational fisherman.

John Chambers, Johnson, Indiana (January 18, 2009)

I do not wish to see the taking of Paddlefish limited to commercial entities. The Paddlefish is a natural resource to the residents of Indiana and the right to lawfully take Paddlefish with a normal, individual fishing license (read non-commercial) should not be revoked.

Larry Bateman, West Point (May 6, 2009)

It is my opinion that these prehistoric fish should be preserved for future generations. Not harvested! I would support a complete ban on taking paddlefish for any reason.

Dick Klene, Jackson, WY (May 6, 2009)

So, the paddlefish is too rare to have a sport fishing season, but commercial fishermen not only can catch them, but sell them on the market? Gee, I hope those commercial folks support the fish and game department in a major way, since they definitely are getting a lot and sport fishermen are getting the short end of the stick. I lived in Ohio before retiring to Wyoming, and still fish Indiana a good bit since I visit Ohio and have lots of relatives around Greensburg, Indianapolis and Batesville. I've never caught a paddlefish, but I'd sure like to, and I'd release it, of course. Interesting to read your articles, but this doesn't sound like a department that is dealing fairly with sport fishing folks, while coddling the lawbreaking industry.

Suzanne Mittenthal, Hoosier Hikers Council, Martinsville, IN (May 6, 2009)

This fishery should be discontinued. Habitat degradation suggests severe threats exist to the preservation of this extremely slow-maturing fish, enough to endanger it.

Chuck Lowe, Indianapolis, IN (May 6, 2009)

Why should there be a commercial harvest while individuals are prohibited from harvesting? I think there should be priority given to the individual, not the commercial interest. Who does the wildlife of the state belong to? Corporations or the people of Indiana? If the paddlefish are threatened, close the fishery for all not just the individual. Manage the resources of the state for the people not commercial interests!

Greg Williamson, New Harmony, (May 14, 2009)

Makes more sense to eliminate commercial fishing. They take more fish than anyone. Missouri did this and limited the number of catfish in general. Sizes increased dramatically as well as numbers. Way past due on the Wabash and Ohio rivers. Very very few if anyone makes a living commercial fishing. Lic. sales probably increase if there was a better chance to catch fish on these rivers. Have fished both for many years have seen more nets and trotlines and less fish every year.

c) Response by the Department of Natural Resources

The Department of Natural Resources offered the following response to the public comments.

DNR Response

Prohibition on Sport-Fishing of Paddlefish

The majority of the comments submitted were in opposition to the rule changes regarding the sport-fishing of paddlefish and did not want to see paddlefish harvest opportunity limited to just commercial fishermen. The comments were principally concerned with allowing the commercial utilization of fisheries resources and felt commercial license fees should be increased.

The view that paddlefish harvest should be allocated in part or whole to sport fishermen seems based on the assumption that paddlefish can be readily taken by sport fishing methods (baited hook or lure and line) as with bluegill, catfish, bass or other common "sport fish" species. This is an erroneous assumption since paddlefish are filter feeders that strain plankton from the water and are not attracted to a baited hook or lure. Occasionally, a paddlefish can be accidentally foul-hooked by a sport angler fishing for something else, but it is not a common occurrence. The intentional snagging of protected species of fish such as bass and walleye with baited or unbaited hooks in Indiana has been illegal on public waters, except for the Ohio River, for many years and is currently illegal on the Ohio River under an emergency rule. Snagging has been allowed in the past only on Indiana's portion of the Ohio River to match Kentucky's fishing regulations. However, this method of "blind grabbing" or intentional snagging of paddlefish has been prohibited under the emergency rule that is currently in place and is proposed within this rule package. Snagging is indiscriminate in that the angler doesn't know for sure what fish they will snag. Large snag hooks can inflict considerable damage to fish that tear loose and escape. This method also results in large quantities of discarded monofilament fishing line that accumulates in snagging locations. Historically, snagging of fish has been viewed by many as a questionable means of sport fishing from an ethical standpoint. The current emergency rule in place for the Ohio River prohibits snagging of fish based on insights gained from the 18-month undercover law enforcement investigation of illegal paddlefish harvesting activities in 2006-2007. People posing as sport fishing snaggers were in fact illegally selling snagged paddlefish in organized groups working for paddlefish egg buyers. When snagging is eliminated as

a legal means of taking paddlefish with rod and reel, there is no legitimate means of taking paddlefish with sport fishing methods save the occasional foul-hooking. Thus, there is in reality no reasonable allocation of paddlefish harvest opportunity to partition between commercial and sport fishing interests.

Commercial Fishing

The issue of whether or not commercial fishing should be allowed is beyond the scope of these proposed rule changes. Prohibiting the commercial take of paddlefish is a substantive change that would require additional review and discussion. Furthermore, commercial license fees are established by statute in IC 14-22-13-1 and 14-22-13-2 and cannot be increased by the Natural Resources Commission. Only the Indiana General Assembly can increase commercial fishing licensing fees.

These rule changes governing the commercial harvest of paddlefish are necessary to protect paddlefish populations in the Ohio River and prevent them from being overfished.

The DNR anticipates that these rule changes will help ensure the continued survival of paddlefish populations in the Ohio River and support Indiana businesses that rely upon commercial fishing for many years to come. Because commercial fishermen can sell the eggs of paddlefish as caviar throughout the world, they are taking an increasing number of paddlefish and, oftentimes, fishing for them in protected areas or with illegal equipment. A major investigation into the poaching and illegal sale of paddlefish was conducted by Indiana Conservation Officers and a U.S. Fish and Wildlife Service Law Enforcement Agent in 2006 and 2007. This investigation led to the arrest of 22 individuals who were taking paddlefish in prohibited areas, selling paddlefish that were taken with illegal equipment, not reporting the taking of paddlefish under their commercial fishing licenses, as well as other violations. Without these rule changes, paddlefish populations will decline and would not be expected to be able to continue to support the businesses that rely upon their harvest. Float-fishing (312 IAC 9-7-16(b)(2))

The DNR Divisions of Fish and Wildlife and Law Enforcement do not believe that the limit on the number of floats used at one time by an individual who is sport-fishing on the Ohio River is necessary. Kentucky's current sport fishing regulations on the Ohio River do not limit the number of floats used by individuals but instead sets an upper limit per boat. There are also no law enforcement concerns at this time regarding float fishing by individuals on the Ohio River. Therefore, the DNR has decided to no longer support the change to limit the number of floats used at one time and is requesting that the added language of "with more than twenty-five (25) floats at one time" in 312 IAC 9-7-16(b)(2) be removed from this rule package.

The DNR is requesting that all of the other changes in this rule package be given final adoption.

...

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule LSA Document #08-886(F)

DIGEST

Amends 312 IAC 9-6-1, 312 IAC 9-6-2, 312 IAC 9-7-16, 312 IAC 9-7-19, and 312 IAC 9-8-6, governing the taking of fish from public waters, to prohibit the taking or possession of paddlefish except under a commercial fishing license on the Ohio River, to amend fish measurement to clarify how a paddlefish is to be measured, to limit commercial fishing for paddlefish on the Ohio River to November 1 through April 30, to establish a minimum size limit, to restrict checking for eggs from a living paddlefish to the insertion of a 10-gauge needle, to restrict the bar mesh size for gill and trammel nets, and to eliminate snagging as a lawful method for taking fish from public waters. Effective 30 days after filing with the Publisher.

312 IAC 9-6-1; 312 IAC 9-6-2; 312 IAC 9-7-16; 312 IAC 9-7-19; 312 IAC 9-8-6

SECTION 1. 312 IAC 9-6-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-1 Definitions pertaining to fish and fishing activities

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22-34-12

Sec. 1. In addition to the definitions in 312 IAC 9-1, the following definitions apply throughout **this rule**, 312 IAC 9-7, 312 IAC 9-8, and 312 IAC 9-10:

- (1) "Alewife" means the species *Alosa pseudoharengus*.
- (2) "American eel" means the species *Anguilla rostrata*.
- (3) "Aquarium pet trade" means the business of importing, producing, or selling live fish for display in:
 - (A) aquariums;
 - (B) tanks; or
 - (C) other continuing exhibits.
- (4) "Atlantic salmon" means the species *Salmo salar*.
- (5) "Bar mesh" means the length of one (1) side of the square mesh measure or as measured between two (2) knots on the same line.
- (6) "Bighead carp" means the species *Hypophthalmichthys nobilis*.
- (7) "Black bass" means the species:
 - (A) *Micropterus salmoides*;
 - (B) *Micropterus dolomieu*; and
 - (C) *Micropterus punctulatus*.
- (8) "Black carp" means the species *Mylopharyngodon piceus*.
- (9) "Black crappie" means the species *Pomoxis nigromaculatus*.
- (10) "Blue catfish" means the species *Ictalurus furcatus*.
- (11) "Bluegill" means the species *Lepomis macrochirus*.
- (12) "Bluntnose minnow" means the species *Pimephales notatus*.
- (13) "Bowfin" means the species *Amia calva*.
- (14) "Brook trout" means the species *Salvelinus fontinalis*.
- (15) "Brown trout" means the species *Salmo trutta*.
- (16) "Buffalo" means the genus *Ictiobus*.
- (17) "Bullhead" means the species:
 - (A) *Ictalurus melas*;
 - (B) *Ictalurus nebulosus*; and
 - (C) *Ictalurus natalis*.
- (18) "Burbot" means the species *Lota lota*.

- (19) "Carp" means the species *Cyprinus carpio*.
- (20) "Cast net" means a net:
 - (A) not more than ten (10) feet in diameter; and
 - (B) having stretch mesh not larger than three-fourths (3/4) inch.
- (21) "Cavefish" means a fish of the family Amblyopsidae.
- (22) "Chain pickerel" means the species *Esox niger*.
- (23) "Channel catfish" means the species *Ictalurus punctatus*.
- (24) "Chinook salmon" means the species *Oncorhynchus tshawytscha*.
- (25) "Chub" means the species:
 - (A) *Coregonus hoyi*; and
 - (B) *Coregonus kiyi*.
- (26) "Cisco" means the species *Coregonus artedii*.
- (27) "Closed aquaculture system" means a rearing facility designed to prevent the escape of cultured organisms to the wild.
- (28) "Coho salmon" means the species *Oncorhynchus kisutch*.
- (29) "Crappie" means:
 - (A) white crappie; and
 - (B) black crappie.
- (30) "Dip net" means a dip net:
 - (A) not exceeding three (3) feet square;
 - (B) without sides or walls; and
 - (C) having stretch mesh not larger than one-half (1/2) inch.
- (31) "Diploid" means a cell or organism that has two (2) complete sets of chromosomes.
- (32) "Exotic catfish" means a walking catfish or other member of the family Clariidae.
- (33) "Exotic fish" means:
 - (A) an exotic catfish;
 - (B) a bighead carp;
 - (C) a black carp;
 - (D) a silver carp;
 - (E) a white perch;
 - (F) a snakehead;
 - (G) a rudd;
 - (H) a ruffe;
 - (I) a tubenose goby;
 - (J) a round goby; or
 - (K) a hybrid or genetically altered fish of any of these species.
- (34) "Fathead minnow" means the species *Pimephales promelas*.
- (35) "Flathead catfish" means the species *Pylodictis olivaris*.
- (36) "Freshwater drum" means the species *Aplodinotus grunniens*.
- (37) "Gaff" or "gaff hook" means an implement:
 - (A) of metal or another hard or tough material;
 - (B) with or without barbs;
 - (C) making a single hook having a shank with or without a handle; and
 - (D) that may be hand held to seize, hold, or sustain fish.
- (38) "Gar" means the genus *Lepisosteus*.
- (39) "Genetically altered fish" means a fish that is the product of genetic manipulation, including polyploidy, gynogenesis, gene transfer, and hormonal sex control.
- (40) "Gizzard shad" means the species *Dorosoma cepedianum*.
- (41) "Golden shiner" means the species *Notemigonus crysoleucas*.
- (42) "Goldfish" means the species *Carassius auratus*.
- (43) "Grab hook" means a device or implement used as a tong to clutch, close down upon, or grasp fish.
- (44) "Grass carp" means the genus *Ctenopharyngodon*.
- (45) "Green sunfish" means the species *Lepomis cyanellus*.
- (46) "Hybrid striped bass" means the hybrid of striped bass and white bass.
- (47) "Hybrid sunfish" means a hybrid of the genus *Lepomis*.
- (48) "Lake herring" means the species *Coregonus artedii*.

- (49) "Lake sturgeon" means the species *Acipenser fulvescens*.
- (50) "Lake trout" means the species *Salvelinus namaycush*.
- (51) "Lake whitefish" means the species *Coregonus clupeaformis*.
- (52) "Largemouth bass" means the species *Micropterus salmoides*.
- (53) "Minnow seine" means a seine or net:
- (A) not more than twelve (12) feet long and four (4) feet deep; and
- (B) having stretch mesh not larger than one-half (1/2) inch.
- (54) "Minnow trap" means a fish trapping device not exceeding twenty-four (24) inches long. The opening of the throat shall not exceed one (1) inch in diameter.
- (55) "Mosquitofish" means the species *Gambusia affinis*.
- (56) "Muskellunge" means the species *Esox masquinongy*.
- (57) "Northern pike" means the species *Esox lucius*.
- (58) "Quagga mussel" means the species *Dreissena bugensis*.
- (59) "Paddlefish" means the species *Polyodon spathula*.
- (60) "Rainbow trout" means the species *Oncorhynchus mykiss*.
- (61) "Redear sunfish" means the species *Lepomis microlophus*.
- (62) "Rock bass" means the species *Ambloplites rupestris*.
- ~~(63) "Rough fish" means any species of fish not defined as a sport fish or protected under IC 14-22-34-12.~~
- ~~(64)~~ (63) "Round goby" mean the species *Neogobius melanostomus*.
- ~~(65)~~ (64) "Rudd" means the species *Scardinius erythrophthalmus*.
- ~~(66)~~ (65) "Ruffe" means the species *Gymnocephalus cernuus*.
- ~~(67)~~ (66) "Sauger" means the species *Stizostedion canadense*.
- ~~(68)~~ (67) "Saugeye" means the hybrid of walleye and sauger.
- ~~(69)~~ (68) "Shad" means the genera:
- (A) *Alosa*; and
- (B) *Dorosoma*.
- ~~(70)~~ (69) "Shovelnose sturgeon" means the species *Scaphirhynchus platyrhynchus*.
- ~~(71)~~ (70) "Silver carp" means the species *Hypophthalmichthys molitrix*.
- ~~(72)~~ (71) "Single hook" means a fishing hook consisting of:
- (A) one (1) shank; and
- (B) one (1) point.
- ~~(73)~~ (72) "Smallmouth bass" means the species *Micropterus dolomieu*.
- ~~(74)~~ (73) "Smelt" means the genus *Osmerus*.
- ~~(75)~~ (74) "Snakehead" means all species of the family *Channidae*, including the genera:
- (A) *Channa*; and
- (B) *Parachanna*.
- ~~(76)~~ (75) "Sockeye salmon" means the species *Oncorhynchus nerka*.
- ~~(77)~~ (76) "Sport fish" means any of the following:
- (A) Largemouth bass.
- (B) Smallmouth bass.
- (C) Spotted bass.
- (D) Rock bass.
- (E) White crappie.
- (F) Black crappie.
- (G) Walleye.
- (H) Sauger.
- (I) Saugeye.
- (J) Striped bass.
- (K) White bass.
- (L) Hybrid striped bass.
- (M) Yellow bass.
- (N) Muskellunge.
- (O) Tiger muskellunge.
- (P) Northern pike.
- (Q) Chain pickerel.
- (R) Trout or salmon.

~~(78)~~ (77) "Spotted bass" means the species *Micropterus punctulatus*.
~~(79)~~ (78) "Steelhead" means the species *Oncorhynchus mykiss*.
~~(80)~~ (79) "Stretch mesh" means the extended distance or length between the extreme angles of a single mesh of net.
~~(81)~~ (80) "Striped bass" means the species *Morone saxatilis*.
~~(82)~~ (81) "Sucker" means the following genera:
 (A) Carpiodes.
 (B) Moxostoma.
 (C) Hypentelium.
 (D) Catostomus.
 (E) Erimyzon.
~~(83)~~ (82) "Tiger muskellunge" means the hybrid of muskellunge and northern pike.
~~(84)~~ (83) "Tilapia" means all species of the genus *Tilapia*.
~~(85)~~ (84) "Triploid" means a cell or organism having three (3) haploid sets of chromosomes.
~~(86)~~ (85) "Trout or salmon" means the following:
 (A) Lake trout.
 (B) Coho salmon.
 (C) Chinook salmon.
 (D) Sockeye salmon.
 (E) Brown trout.
 (F) Steelhead (or rainbow trout).
 (G) Brook trout.
 (H) Atlantic salmon.
~~(87)~~ (86) "Tubenose goby" means the species *Proterorhinus marmoratus*.
~~(88)~~ (87) "Walleye" means the species *Stizostedion vitreum*.
~~(89)~~ (88) "Warmouth" means the species *Lepomis gulosus*.
~~(90)~~ (89) "White bass" means the species *Morone chrysops*.
~~(91)~~ (90) "White catfish" means the species *Ictalurus catus*.
~~(92)~~ (91) "White perch" means the species *Morone americana*.
~~(93)~~ (92) "White crappie" means the species *Pomoxis annularis*.
~~(94)~~ (93) "Yellow bass" means the species *Morone mississippiensis*.
~~(95)~~ (94) "Yellow perch" means the species *Perca flavescens*.
~~(96)~~ (95) "Zebra mussel" means the species *Dreissena polymorpha*.
(Natural Resources Commission; 312 IAC 9-6-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; filed May 16, 2002, 12:25 p.m.: 25 IR 3047; filed Jul 23, 2003, 10:30 a.m.: 26 IR 3866; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Feb 27, 2007, 2:25 p.m.: 20070328-IR-312060262FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Aug 28, 2009, 3:39 p.m.: 20090923-IR-312080886FRA)

SECTION 2. 312 IAC 9-6-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-2 Fish measurement

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 2. (a) Except as provided in subsection **subsections (b) and (c)**, the measurement of the length of a fish must be taken in a straight line from the tip of the snout with the mouth closed to the utmost end of the caudal (tail) fin when the fin is compressed so that the upper and lower lobes of the fin touch or overlap.

(b) The measurement of the fork length of shovelnose sturgeon must be taken in a straight line from the tip of the snout to the fork of the tail fin.

(c) **The measurement of the eye to fork length of paddlefish must be taken in a straight line from the eye to the fork of the tail fin.**

(Natural Resources Commission; 312 IAC 9-6-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Feb 27, 2007, 2:25 p.m.: 20070328-IR-312060262FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Aug 28, 2009, 3:39 p.m.: 20090923-IR-312080886FRA)

SECTION 3. 312 IAC 9-7-16 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-16 Sport fishing on the Ohio River

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 16. (a) This section governs fishing on the Ohio River, excluding all bays and tributaries.

(b) A person must not take sport fish except by any of the following:

- (1) Fishing pole or hand line.
- (2) Float fishing.
- (3) Setlines:
 - (A) attached to a:
 - (i) tree limb;
 - (ii) tree trunk;
 - (iii) bank pole; or
 - (iv) the bank itself; and
 - (B) each bearing one (1) single or multibarbed hook.
- (4) Not more than two (2) trotlines per ~~individual~~ **person**. Each trotline shall have not more than fifty (50) single or multibarbed baited hooks placed not closer together than eighteen (18) inches. All trotlines ~~shall~~ **must** be tended at least once every twenty-four (24) hours.

(c) ~~An individual~~ **A person** may take ~~rough an exempted species of fish as defined in 312 IAC 9-6-10~~ by the methods prescribed in subsection (b) or according to the following methods:

- (1) Long bow, including compound bow, with an arrow having one (1) or more barbs and a line attached. ~~Rough~~ **An exempted species of fish** without scales shall not be taken with bow and arrow during nighttime hours (from one-half (1/2) hour after sunset until one-half (1/2) hour before sunrise).
- (2) Gigging from February 1 through May 10 with any pronged or barbed instrument attached to the end of a rigid object. A person must not take fish by gigging from a boat or platform.
- (3) ~~Snagging from February 1 through May 10 with one (1) single or treble hook attached by line to a pole and jerked or pulled through the water. A person must not take fish by snagging from a boat or platform.~~

(d) A person must not take fish within two hundred (200) yards below any dam on the Ohio River except by fishing pole or hand line.

(e) A person must not take minnows from the Ohio River except by:

- (1) a minnow trap not to exceed three (3) feet long and eighteen (18) inches in diameter nor having a throat opening greater than one (1) inch in diameter;
- (2) a dip net not to exceed three (3) feet in diameter;
- (3) a minnow seine not to exceed thirty (30) feet long and six (6) feet deep nor having mesh size larger than one-fourth (1/4) inch bar mesh;
- (4) a cast net not to exceed nine (9) feet in diameter nor having mesh size larger than three-eighths (3/8) inch bar mesh; or
- (5) lawful fishing methods provided in this section.

(f) The daily bag limits, possession limits, and size limits for taking fish by angling are as follows:

	Bag	Possession	Size (Inches)
Bass (largemouth, smallmouth, and spotted)	6	12	12 (except no size limit on spotted bass)
Bass (white, yellow, striped, and hybrids)	30	60	No more than four 4 fish can be 15 or longer
Rock bass	15	30	none
Walleye, sauger, and saugeye	10	20	none
Muskellunge and tiger muskellunge	2	2	30
Crappie	30	60	none

(Natural Resources Commission; 312 IAC 9-7-16; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; errata filed Nov 24, 1997, 4:30 p.m.: 21 IR 1347; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Aug 28, 2009, 3:39 p.m.: 20090923-IR-312080886FRA)

SECTION 4. 312 IAC 9-7-19 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-19 Paddlefish

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22

Sec. 19. (a) **Except as provided in 312 IAC 9-8-6 with a commercial fishing license**, a person ~~may~~ **must** not take or possess paddlefish from any public water. ~~except the Ohio River.~~

(b) ~~The daily bag limit is two (2) paddlefish.~~

(c) ~~The sorting or release of lawfully snagged paddlefish is prohibited.~~

(d) ~~Snagging is prohibited for the remainder of the day after two (2) paddlefish are taken.~~

(e) ~~Snagging is prohibited within two hundred (200) yards of a dam located on the Ohio River.~~

(Natural Resources Commission; 312 IAC 9-7-19; filed May 28, 1998, 5:14 p.m.: 21 IR 3723; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Aug 28, 2009, 3:39 p.m.: 20090923-IR-312080886FRA)

SECTION 5. 312 IAC 9-8-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-8-6 Commercial fishing on the Ohio River

Authority: IC 14-10-2-4; IC 14-22-2-6; IC 14-22-13

Affected: IC 14-22-13-4

Sec. 6. (a) This section applies to license holders engaged in commercial fishing on the Ohio River as authorized under IC 14-22-13.

(b) "License holder" means an individual licensed under IC 14-22-13 to use in, and to possess for use in, the water:

- (1) seines;
- (2) nets; or
- (3) other commercial fishing gear.

The term includes an individual commercially fishing while accompanied by the licensee as specified at IC 14-22-13-4.

~~(b) No person~~ (c) A license holder shall not take or sell fish except in accordance with IC 14-22-13, this section, and 312 IAC 9-10. A ~~person~~ license holder may take fish with the aid of illumination of:

- (1) a spotlight;
- (2) a searchlight; or
- (3) an artificial light;

where lawfully engaged in commercial fishing.

~~(e)~~ (d) A license holder under this section may take and sell all species of fish from the Ohio River except the following:

- (1) Largemouth bass.
- (2) Smallmouth bass.
- (3) Spotted bass.
- (4) Rock bass.
- (5) White crappie.
- (6) Black crappie.
- (7) Walleye.
- (8) Sauger.
- (9) Saugeye.
- (10) Striped bass.
- (11) White bass.
- (12) Hybrid striped bass.
- (13) Yellow bass.
- (14) Muskellunge.
- (15) Northern pike.
- (16) Tiger muskellunge.
- (17) Chain pickerel.
- (18) Lake sturgeon.
- (19) Trout.
- (20) Salmon.
- ~~(21) Shovelnose sturgeon taken on June 1 through September 30.~~

(e) A license holder may take and sell shovelnose sturgeon ~~taken from October 1 through May 31~~ must be that are at least twenty-five (25) inches in fork length **only from October 1 through May 31**.

(f) A license holder may take and sell paddlefish that are at least thirty-two (32) inches in eye to fork length **only from November 1 through April 30**. The cutting or mutilation of live paddlefish to check for eggs is prohibited except that a 10-gauge needle may be inserted into the abdomen between the pectoral and pelvic fins to determine the presence of eggs.

~~(d)~~ (g) A license holder under this section must tag each item of gear so that a conservation officer may determine if the:

- (1) gear is properly licensed; and
- (2) license holder is complying with the law.

(e) (h) No person shall possess a seine, net, or commercial trotline except as authorized ~~for~~ **with a valid** commercial fishing license for the Ohio River. This subsection does not apply to a manufacturer, retailer, or wholesale dealer who possesses gear exclusively for sale.

~~(f)~~ (i) Commercial fishing nets authorized under this section cannot be used on a bay or inlet of the Ohio River. A line drawn from point to point of a bay or inlet denotes the limits of the fishing zone. Commercial

gear cannot be used within fifty (50) yards of the mouth of a stream. Commercial gear, except slat traps, cannot be used in the following locations:

- (1) John T. Myers Dam downstream to the outer lock wall and the portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.
- (2) Newburgh Dam downstream to the end of the outer lock wall.
- (3) Cannellton Dam downstream to the end of the outer lock wall.
- (4) McAlpine Dam downstream to the K and I railroad bridge.
- (5) Markland Dam downstream to the end of the outer lock wall.

~~(g)~~ (j) Each item of fishing gear in use must be tended not less frequently than once every twenty-four (24) hours and all fish taken by the gear removed, except that baited hoop nets or slat traps may be left unattended for not more than seventy-two (72) hours. Each item of gear must be removed from the waters in which the item was fished immediately upon usage.

~~(h)~~ (k) Gear is authorized only as set forth as follows:

- (1) Lines and mesh must be made of:

- (A) linen;
- (B) cotton; or
- (C) a flexible synthetic fiber.

- (2) The following restrictions apply to a hoop net, wing net, straight lead net, or heart lead net:

- (A) Each net described in this subdivision must have a minimum bar mesh size of one (1) inch.

- (B) Hoops may be any size, shape, or material.

- (C) The maximum length of the lead or wing is sixty (60) feet.

- (D) One (1) tag must be attached to the front hoop of each net.

- (3) The following restrictions apply to a gill or trammel net:

- (A) The minimum bar mesh size **that can be fished from November 1 through April 30** is four (4) inches.

- (B) **The only bar mesh size that can be fished from May 1 through October 31 is from four (4) inches to four and one-half (4 1/2) inches.**

- ~~(B)~~ (C) The nets referenced in this subdivision may be fished weighted or as a flag net.

- ~~(C)~~ (D) A tag must be attached to the net at intervals not less than one hundred (100) feet apart.

- (4) The following restrictions apply to a commercial trotline:

- (A) Each line must have more than fifty (50) hooks placed not closer than eighteen (18) inches apart.

- (B) One (1) tag must be attached.

- (C) The trotline must be:

- (i) not longer than three thousand (3,000) feet, including staging; and

- (ii) fished separately rather than tied in a continuous line.

- (5) The following restrictions apply to a seine:

- (A) A seine must have the following:

- (i) A minimum bar mesh size of one (1) inch.

- (ii) Both float and lead lines.

- (iii) Wood, fiberglass, metal poles, or brails attached to each end.

- (B) A seine in the water must be attended by **persons individuals** pulling the seine through the water for the entrapment of fish.

- (C) A seine must have a tag attached at intervals not less than one hundred (100) feet apart.

- (6) The following restrictions apply to a slat trap basket:

- (A) No wire or other mesh may be added to the trap.

- (B) At least two (2) openings not less than one and one-fourth (1 1/4) inches wide must be located between the slats. These openings shall not be restricted by cross-bracings shorter than eight (8) inches long.

- (C) The trap shall be not larger than two (2) feet in diameter or square end measure.

- (D) A tag must be attached to the open ring or square.

~~(i)~~ (l) A license holder must do the following:

- (1) Keep accurate daily catch records on a departmental form of the following:

- (A) The pounds and species of fish caught by gear type.

- (B) The number of paddlefish and shovelnose sturgeon caught by gear type.

- (C) The pounds of paddlefish, shovelnose sturgeon, sucker, and eggs sold.
- (D) The location fished by pool, river mile, and county.
- (2) Submit to the department the completed form required under subdivision (1) by the fifteenth day of each month for the preceding month whether the license holder fished or not.
- (3) Allow on-board and dockside inspection of the gear and catch at any time by the director or the director's representative.

(Natural Resources Commission; 312 IAC 9-8-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2725; filed May 28, 1998, 5:14 p.m.: 21 IR 3727; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Feb 27, 2007, 2:25 p.m.: 20070328-IR-312060262FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Aug 28, 2009, 3:39 p.m.: 20090923-IR-312080886FRA)